

**COMMENTS AND RESPONSES TO PROPOSED SUBSTANTIVE CHANGES  
CHAPTER 59, TITLE 11, ADMINISTRATIVE RULES  
AMBIENT AIR QUALITY STANDARDS  
AND  
CHAPTER 60, TITLE 11, ADMINISTRATIVE RULES  
AIR POLLUTION CONTROL**

**1. BACKGROUND**

On 18 March 1992, the State of Hawai'i Supreme Court ruled, among other items, that the State of Hawai'i Department of Health must promulgate rules governing hydrogen sulfide emissions before regulating such emissions through the permit process.

As required by the aforementioned order, Department of Health proposed revisions to Hawai'i Administrative Rules, Chapter 11-59 entitled "Ambient Air Quality Standards." Department of Health also proposed revisions to Hawai'i Administrative Rules, Chapter 11-60 entitled "Air Pollution Control." More specifically, Section 11-59-4(i) would establish a statewide hydrogen sulfide ambient air quality standard; Section 11-60-19(d)(7), Section 11-60-19(e)(7) and Section 11-60-19(f)(3)(G) would establish a hydrogen sulfide Alert Level, Warning Level, and Emergency Level, respectively; and Section 11-60-47(c) would give the director of health of the State of Hawai'i authority to impose stricter permit conditions.

By a notice appearing in local newspapers, Department of Health initiated the process to promulgate administrative rules. There, Department of Health noticed the proposed rule changes, and public hearing dates to receive comments on the proposed revisions to Hawai'i Administrative Rules, Chapter 11-59 and Chapter 11-60. The notice appeared in the West Hawai'i Today (1 April 1992), Hawai'i Tribune Herald (2 April 1992), Honolulu Advertiser (3 April 1992), Garden Island (3 April 1992) and Maui News (3 April 1992).

On 4 May 1992, Department of Health held the first public hearing at Lihue, Kaua'i. Eight (8) individuals participated with six (6) individuals providing oral comments at the public hearing.

On 5 May 1992, Department of Health held the second public hearing at Honolulu, O'ahu. There, approximately eighty-three (83) individuals were in attendance with fourteen (14) individuals presenting oral comments at the public hearing.

On 6 May 1992, Department of Health held the third public hearing at Wailuku, Maui. Approximately twenty-four (24) individuals took part with eight (8) individuals offering oral comments at the public hearing.

On 7 May 1992, Department of Health held the last public hearing at Hilo, Hawai'i. Approximately ninety (90) individuals were in attendance with fifty-six (56) individuals giving oral comments at the public hearing.

During the course of rule making, Department of Health kept the record open up to 15 May 1992 and received comments from government representatives and agencies, industries, businesses, concerned citizens, professionals, and interest groups. One hundred seventy (170) written and oral comments were received, entered into the record, and fully considered and reviewed by Department

of Health. The discussion that follows summarizes the proposed revisions, the major comments on them, Department of Health responses, and final revisions.

## **2. HIGHLIGHTS**

Department of Health has proposed a new Hawai'i Administrative Rules, Section 11-59-4(i) which would establish a hydrogen sulfide ambient air quality standard of thirty-five (35) micrograms per cubic meter (or twenty-five [25] parts per billion) averaged over a one-hour period. The proposed hydrogen sulfide ambient air quality standard will apply throughout the State of Hawai'i.

Department of Health has proposed a new Hawai'i Administrative Rules, Section 11-60-19(d)(7) that would establish a one-hour average thirty-five (35) micrograms per cubic meter (or twenty-five [25] parts per billion) hydrogen sulfide Alert Level. The Alert Level is that concentration of hydrogen sulfide at which first-stage control action begins. Health advisories will be issued, and source activities curtailed as ordered by the director of health. The Alert Level is equal to the proposed ambient air quality standard.

Department of Health has proposed a new Hawai'i Administrative Rules, Section 11-60-19(e)(7) that would establish a one-hour average one hundred thirty-nine (139) micrograms per cubic meter (or one hundred [100] parts per billion) hydrogen sulfide Warning Level. The Warning Level indicates that hydrogen sulfide concentrations are continuing to increase and that additional abatement actions are necessary. Actions to be taken include the issuance of health advisories, and curtailment or termination of source activities as ordered by the director of health.

Department of Health has proposed a new Hawai'i Administrative Rules, Section 11-60-19(f)(3)(G) that would establish a one-hour average thirteen hundred and ninety (1,390) micrograms per cubic meter (or one thousand [1,000] parts per billion) hydrogen sulfide Emergency Level. Should the hydrogen sulfide concentration continue to increase beyond the Warning Level, or if the hydrogen sulfide concentration exceeds the Emergency Level, the public should be evacuated from the affected area if so recommended by the director of health, civil defense, or police department.

Department of Health has proposed a new Hawai'i Administrative Rules, Section 11-60-47(c) that will codify the director of health's discretion to impose stricter permit conditions to further limit the air pollutants and operations of the source below ambient air quality standards on a case-by-case basis.

Department of Health has proposed various non-substantive changes for grammar, clarity and consistency, and technical changes throughout Hawai'i Administrative Rules, Chapter 11-60.

## **3. COMMENTS AND RESPONSES**

### **A. Section 11-59-4 and Section 11-60-19**

1. Commenters stated that Department of Health's proposal to establish a hydrogen sulfide ambient air quality standard was related to nuisance. While a few commenters agreed with the nuisance relationship, most did not. They objected for several reasons: first, that it was overly protective; second, that it was not protective for the most sensitive individual; third, that it was not set

at an odor detection threshold; and fourth, that there is no health or scientific basis to set an air standard at a nuisance level.

The criterion used by Department of Health to derive the standard is the protection of public health. This standard will also offer some protection against the interference with the comfortable enjoyment of life and property.

2. Certain commenters suggested that Department of Health promulgate an ambient air quality standard based on a variation of worker exposure levels.

Department of Health proposed a hydrogen sulfide ambient air quality standard to protect public health. Worker exposure levels such as the Threshold Limit Value-time-weighted average applies to healthy, adult workers where exposure to any substance or compound should not be exceeded in any 8-hour work shift of a 40-hour work week. Consequently, using variations of worker exposure levels is not the preferred scientific or public health basis.

3. Department of Health received numerous comments requesting scientific and public health justifications for the proposed ambient air quality standard.

Department of Health used the U.S. Environmental Protection Agency methodology and scientific studies to derive its proposed ambient air quality standard. Essentially, Department of Health evaluated four animal studies that used acute exposure durations. Based on data from these animal studies and using standard methodologies, Department of Health determined that a standard of thirty-five (35) micrograms per cubic meter (or twenty-five [25] parts per billion) averaged over one hour is protective of public health.

4. Various commenters pointed out that the proposed ambient air quality standard should apply to specific sources, activities, locations and/or regions. And, their sources or activities should be exempt from the standard, or at least for an interim period until a baseline study has been completed. The commenters were concerned that their facilities would exceed the proposed ambient air quality standard.

Hawai'i Revised Statutes, Chapter 342B allows the establishment of an ambient air quality standard for the State as a whole, or for any part thereof. Department of Health decided on the former and proposed a hydrogen sulfide ambient air quality standard that would apply throughout the State of Hawai'i. In Department of Health's view, the State of Hawai'i contains hydrogen sulfide emitting sources and activities on most islands, and the health effects are the same regardless of location. Hence, Department of Health will not propose an area standard. An exemption of any source or activity is not appropriate in its ambient air quality standard rules.

5. Numerous commenters suggested an ambient air quality standard with an averaging time of less than sixty minutes to prevent excursions. The commenters expressed concern because the proposed sixty-minute averaging time allows ambient concentration impacts for example, to approach two hundred fifty (250) parts per billion for a ten-minute period within the block

hour. A three-minute, ten-minute, or thirty-minute averaging period would reduce significant excursions.

Department of Health understands the commenters reasoning for a shorter averaging time. One hour is a reasonable and commonly accepted averaging period for ambient air quality standards. Indeed, Hawai`i does not utilize an averaging period shorter than one hour for any of its other ambient air quality standards.

Facilities generally emit air pollutants at relatively constant rates during normal permitted operations. Unusually high levels of emissions would only occur if the control systems were bypassed or shut down. To deliberately bypass, shut down, or modify the control system after a permit has been issued without Department of Health approval, however, would be subject to enforcement action by Department of Health under Section 11-60-53 of the Hawai`i Administrative Rules, and Chapter 342B of the Hawai`i Revised Statutes. The anticipated variations over periods of time less than one hour are not believed to be public health hazards.

6. Various commenters wanted to know if Department of Health was objective in proposing the ambient air quality standard. Their concern stems from past experience with Department of Health, regulatory/government officials, and geothermal industry.

Department of Health has proposed an ambient air quality standard based on scientific studies. The standard applies throughout the State and to all hydrogen sulfide emitting sources and activities. No specific source or activity is exempt in an ambient air quality rule. No area hydrogen sulfide standard is being proposed. The intent of the proposal as noticed by Department of Health is to protect public health.

7. Department of Health received numerous comments to its proposed three action levels. The comments or concerns include: 1) setting the Alert Level equal to the ambient air quality standard; 2) relating action levels to nuisance; 3) establishing an emergency response plan in lieu of action levels to deal with emergency or upset situations; 4) providing scientific data for the action levels; 5) implementing a monitoring program; 6) identifying a single person who will recommend evacuation; 7) determining if evacuation should be mandatory or voluntary; and 8) setting conservative action levels.

Based on the comments received, Department of Health will be re-evaluating the concentration levels at which official advisories or actions are to be implemented. The decision to defer promulgation of these rules will not impair the ability of Department of Health to protect the public. The director of health has the authority under Chapter 342B of the Hawai`i Revised Statutes to take any and all actions necessary to prevent an imminent peril to public health and safety.

**B. Section 11-60-47**

1. Certain commenters observed that the proposed regulatory language conflicts with Best Available Control Technology, and the definition of Reasonable Control Technology is not provided in the Hawai'i Administrative Rules.

The proposed rule allows the director of health to impose more restrictive permit conditions to further limit the air pollutants and operation of the source as determined by each individual case. In addition to imposing permit conditions relating to any information submitted in conjunction with the permit application, the proposed rule is intended to insure that the operation of any source does not significantly deteriorate existing air quality or compromise the protection of public health, welfare and safety. As written, the current rules already require any source emitting air pollutants in significant amounts to apply best available control technology. The proposed rule allows the director of health to impose reasonable available control technology on those sources emitting air pollutants below the significant levels. In determining whether more restrictive conditions should be imposed to further limit the air pollutants, the director of health shall consider the relevant circumstances of each individual case.

Department of Health is using the term "Reasonable Control Technology" in the same context and definition as the U.S. Environmental Protection Agency term "Reasonable Available Control Technology" (40 CFR Part 51.100(c)) which is defined as devices, systems process modifications, or other apparatus or techniques that are reasonably available taking into account (1) the necessity of imposing such controls in order to attain or maintain a national or state ambient air quality standard, (2) the social, environmental, and economic impact of such controls, and (3) alternative means of providing for attainment and maintenance of such standard.

2. Department of Health received a number of comments contending that the proposed rule gives the director of health too much authority without due process. They also argued that the proposed rule is in direct conflict with the recent State of Hawai'i Supreme Court decision regarding circumvention.

Department of Health did not feel the revision or deletion of the proposed rule was warranted based on the comments received. In accordance with Section 11-60-45 of the Hawai'i Administrative Rules, any person may request an opportunity for public comment or public hearing in the consideration of any air permit application. Under Section 11-60-46 of the Hawai'i Administrative Rules and Chapter 342B of the Hawai'i Revised Statutes, the applicant for an air permit may request a hearing on the director of health's decision approving, conditionally approving or denying the air permit application.

In consultation with the Attorney General's office, the proposed rule is not viewed as a direct conflict with the recent Supreme Court decision nor a circumvention of the requirement for ambient air quality standards.

**C. Additional Comments**

1. Some commenters urged Department of Health to establish emission limitations, source testing requirements, ambient monitoring programs, and enforcement actions for hydrogen sulfide emitting sources. They contend that it is easier to control the emissions at the source, the monitoring program and source test can be used to determine compliance. and penalties should be issued for non-compliance.

Department of Health imposes emission limits and operational restrictions as an effective means to control air pollution.

Department of Health has promulgated generic rules for source testing (Hawai'i Administrative Rules, Section 11-60-15) and ambient monitoring (Hawai'i Administrative Rules, Section 11-60-18). The requirements for source testing and ambient monitoring is at the discretion of the director of health and if required, are written as requirements of the air permit.

Department of Health can initiate enforcement action under Hawai'i Administrative Rules, Section 11-60-53. The director of health can revoke, suspend or modify a permit if after a public hearing, it is determined that: 1) a source is in non-compliance with Chapter 11-60 'Air Pollution Control'; 2) a source would prevent the maintenance, or cause a violation, of federal or state ambient air quality standards; 3) a source violated a condition of a permit; 4) a permit was obtained through misrepresentation or failure to disclose all relevant facts; 5) a source is constructed or operated outside the permit information submitted by a project proponent; 6) there is a change in any condition relating to reduction or elimination of permitted discharge; or 7) the action is in the best interest of the public. Chapter 342B Hawai'i Revised Statutes also authorizes enforcement actions for any violation of a permit condition, statutory provision, or rule adopted pursuant to Chapter 342B.

2. In general, those commenting over release of other air pollutants were concerned with cumulative and synergistic effects. The metals and compounds identified as being associated with hydrogen sulfide include mercury, boron and radon.

Hydrogen sulfide is an acute-acting substance which does not have cumulative effects. There is no evidence of synergistic effects between hydrogen sulfide and mercury, boron or radon. In addition, Department of Health has proposed an ambient air quality standard that includes a wide margin of safety which will protect public health from any potential synergistic effects associated with exposure to other air pollutants.

3. Department of Health received comments on the health effects of hydrogen sulfide to plants, birds and animals. The concern is for protected, rare and endangered species.

Based on the review of the available literature, exposure to thirty-five (35) micrograms per cubic meter (or twenty-five [25] parts per billion) over one hour should not result in adverse impacts to plants, birds and animals.

# SUMMARY TABLE - ISLAND OF KAUA'I

CODE		COMMENTOR	COMMENT CATEGORY			
OR	WR		AQ	AL	PC	OT
1	1	Roger Ferguson	✓	✓	✓	
2	2	Michael Furukawa	✓	✓	✓	
3		Daniel McCarthy			✓	
4	3	Owen Moe	✓	✓	✓	
5	4	Keith Smith	✓	✓	✓	
6	5	Michael Tokushige	✓	✓	✓	

## Codes:

OR Oral Comment  
 WR Written Comment  
 AQ Air Quality Standard  
 AL Action Levels  
 PC Permit Condition  
 OT Other

# SUMMARY TABLE - ISLAND OF MAUI

CODE		COMMENTOR	COMMENT CATEGORY			
OR	WR		AQ	AL	PC	OT
1	1	Peter Brodie	✓	✓	✓	
2	2	Robert Kwok	✓	✓	✓	
3	3	Steven Moser	✓	✓		✓
4		George Purdy				✓
5	4	Jimmy Rust	✓	✓		✓
6	5	Bill Smith	✓	✓	✓	✓
7		Colleen Welty	✓	✓	✓	
8	6	Jim Williamson	✓	✓		

## Codes:

OR Oral Comment  
 WR Written Comment  
 AQ Air Quality Standard  
 AL Action Levels  
 PC Permit Condition  
 OT Other



# SUMMARY TABLE - ISLAND OF MAUI

CODE		COMMENTOR	COMMENT CATEGORY			
OR	WR		AQ	AL	PC	OT
1	1	Peter Brodie	✓	✓	✓	
2	2	Robert Kwok	✓	✓	✓	
3	3	Steven Moser	✓	✓		✓
4		George Purdy				✓
5	4	Jimmy Rust	✓	✓		✓
6	5	Bill Smith	✓	✓	✓	✓
7		Colleen Welty	✓	✓	✓	
8	6	Jim Williamson	✓	✓		

## Codes:

OR Oral Comment  
 WR Written Comment  
 AQ Air Quality Standard  
 AL Action Levels  
 PC Permit Condition  
 OT Other

# SUMMARY TABLE - ISLAND OF O`AHU

CODE		COMMENTOR	COMMENT CATEGORY			
OR	WR		AQ	AL	PC	OT
1	1	Wallace S. Amioka			✓	
2	2	Rick Eveleth	✓			
3	3	Buzz Hong	✓	✓	✓	✓
4		Herbert Kaopua	✓			
5		Allan Kawada	✓	✓	✓	
6	4	Wendell Koga	✓	✓		
7		Emmett Lee Loy	✓			
8	5	Davianna McGregor	✓	✓		
9		James Morrow	✓	✓	✓	✓
10	6	Rod Moss	✓	✓		
11	7	Elmer Nii	✓	✓	✓	
12	8	Michael Street	✓	✓	✓	
13	9	Don Thomas	✓	✓		
14	10	Stephanie Whalen	✓	✓	✓	✓

## Codes:

OR      Oral Comment  
 WR      Written Comment  
 AQ      Air Quality Standard  
 AL      Action Levels  
 PC      Permit Condition  
 OT      Other

**SUMMARY TABLE - ISLAND OF HAWAI'I**

CODE		COMMENTOR	COMMENT CATEGORY			
OR	WR		AQ	AL	PC	OT
1	1	Donald Abdul	✓	✓		✓
2		Jim Albertini	✓	✓		
3	2	Gary Alexander	✓	✓		✓
4		Elise Anstedt				✓
5		Bonnie Bator	✓	✓		
6		Adrian Barber	✓			
7	3	Barbara Bell				✓
8	4	Wayne Blyth	✓			
9		Barbara Brooks	✓	✓		
10	5	Dwight Carey	✓	✓	✓	
11	6	Dante Carpenter	✓	✓	✓	
12	7	Ed Clark	✓	✓		
13	8	June Curtiss	✓	✓	✓	
14		John Davis	✓	✓		
15		James W. Ednie	✓	✓	✓	
16	9	Denise Fleming	✓	✓		
17		Ole Fulke	✓	✓		
18		Max Goldberger	✓	✓		✓
19	10	J. Anthony Hanley	✓	✓		
20	11	Jane Hedtke				✓
21	12	Paula Helfrich	✓	✓		
22	13	Wallace Ishibashi	✓	✓		✓
23	14	R. and J. Jacobson	✓			✓
24	15	Allan Kawada	✓	✓	✓	
25		Kristine Kubat	✓	✓		
26		Andy Levin				✓
27		Geoff Lest	✓	✓		✓
28	16	Francois L'Orange	✓	✓		

# SUMMARY TABLE - ISLAND OF HAWAI'I (Cont'd)

CODE		COMMENTOR	COMMENT CATEGORY			
OR	WR		AQ	AL	PC	OT
29	17	Alleen Lum	✓	✓		
30	18	Margaret McGuire	✓	✓		
31	19	George Martin	✓	✓		✓
32		Aurora Martinovich	✓			✓
33	20	Steve Morris	✓	✓		✓
34	21	James Morrow	✓	✓	✓	✓
35	22	Jerry Nago	✓	✓		
36	23	Kevin O'Connell	✓	✓		
37	24	Ed Ogsawara	✓	✓	✓	
38	25	Jon Olson	✓			✓
39		Delan Perry	✓	✓		
40	26	Jennifer Perry				✓
41		Robert Petricci	✓	✓		
42		Steve Phillips	✓			✓
43		Greg Pommerenk	✓	✓		
44		Russel Ruderman	✓	✓		
45		Penny Shaver	✓	✓		✓
46	27	Richard Shiigi	✓	✓		
47		Rene Siracusa	✓	✓		
48	28	Jim Snyder				✓
49		Alice Suncloud	✓	✓		
50	29	Dennis Taketa	✓	✓		
51	30	Tom Tallent	✓			
52	31	Harold Tanouye	✓	✓		✓
53		Don Thomas	✓	✓		
54	32	Elmer Vieira	✓	✓		✓
55		Dave Zeissler	✓	✓		
56		Conrad Zydevelt	✓	✓		

Codes:

OR	Oral Comment	AL	Action Levels
WR	Written Comment	PC	Permit Condition
AQ	Air Quality Standard	OT	Other

**SUMMARY TABLE - ADDITIONAL COMMENTS**

CODE		COMMENTOR	COMMENT CATEGORY			
OR	WR		AQ	AL	PC	OT
	1	Maitland Akau, Sr.	✓	✓		✓
	2	William Bonnet	✓	✓	✓	
	3	Don Cataluna	✓	✓		
	4	Clint Churchill	✓			
	5	D. N. Cox and R. Scofield	✓	✓		
	6	Frank DeLuz	✓	✓		
	7	Earl Dunn	✓	✓		
	8	Robert Fernandez	✓	✓		
	9	Mary Miho Finley	✓	✓	✓	✓
	10	D. Gienty and D. Jacobs				✓
	11	Ray Glory	✓	✓	✓	
	12	Wilson B. Goddard	✓	✓		✓
	13	Brian Gray	✓	✓		
	14	Glenn Hashimoto	✓	✓		
	15	Nelson Ho	✓	✓		
	16	Ross L. Kauper and Robert Reynolds	✓	✓		
	17	George N. Kaya	✓			
	18	Randy Lee				✓
	19	Carl Meierdiercks	✓	✓		
	20	Mike Miyahira	✓	✓		
	21	K.O. Mohn	✓	✓	✓	
	22	David Morgan	✓	✓	✓	
	23	James Nobriga	✓	✓		
	24	Myron Nomura	✓	✓		
	25	National Park Service	✓	✓		
	26	Steve Oliver	✓			
	27	Henry Otani	✓	✓		
	28	Pacific Resources, Inc.	✓	✓	✓	
	29	J.A. Rispoli	✓	✓	✓	
	30	Janette D. Sherman	✓			✓
	31	Murray Towill	✓	✓		✓

CODE		COMMENTOR	COMMENT CATEGORY			
OR	WR		AQ	AL	PC	OT
	32	John True	✓			
	33	Janice A. Ola Wilson	✓	✓		

**Codes:**

OR      Oral Comment  
 WR      Written Comment  
 AQ      Air Quality Standard  
 AL      Action Levels  
 PC      Permit Condition  
 OT      Other

Amendment and Compilation of  
Chapters 11-59 and 11-60  
Hawaii Administrative Rules

1. Chapter 11-59, Hawaii Administrative Rules, entitled "Ambient Air Quality Standards" is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 59

AMBIENT AIR QUALITY STANDARDS

- \$11-59-1 Purpose
- \$11-59-2 Definitions
- \$11-59-3 Reference conditions
- \$11-59-4 Ambient air quality standards
- \$11-59-5 Prohibition
- \$11-59-6 Penalties and remedies
- \$11-59-7 Severability

Historical Note: 11-59, Hawaii Administrative Rules, is based substantially on Public Health Regulations, Chapter 42, Ambient Air Quality Standards, Department of Health, State of Hawaii. [Eff 9/24/71; am 3/21/72; R 11/29/82]

\$11-59-1 Purpose. The ambient air quality standards of this chapter seek to protect public health and welfare and to prevent the significant deterioration of air quality. [Eff 11/29/82; comp (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7410, 7416; 40 C.F.R. Part 51) (Imp: HRS §342B-31; 42 U.S.C. §§7407, 7409, 7410, 7416; 40 C.F.R. Part 51)]

§11-59-2 Definitions. As used in this chapter:

"Ambient air" means the general outdoor atmosphere to which the public has access.

"Reference method" means a method of sampling and analyzing the ambient air which the U.S. Environmental Protection Agency (EPA) specifies as a reference or an equivalent method, or absent EPA specifications, a method of sampling and analysis that the state director of health specifies as a reference. [Eff 11/29/82; comp (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7410, 7416; 40 C.F.R. Part 51) (Imp: HRS §342B-31; 42 U.S.C. §§7407, 7409, 7410, 7416; 40 C.F.R. Part 51)]

§11-59-3 Reference conditions. All measurement analyses shall correct results to a reference temperature of twenty-five degrees centigrade and a reference pressure of [760] seven hundred sixty millimeters of mercury. [Eff 11/29/82; am and comp (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7410, 7416; 40 C.F.R. Part 51) (Imp: HRS §342B-31; 42 U.S.C. §§7407, 7409, 7410, 7416; 40 C.F.R. Part 51)]

§11-59-4 Ambient air quality standards. (a) The numerical ambient air quality standards below limit the time-averaged concentration of specified pollutants dispersed or suspended in the ambient air of the State, but these standards do not in any manner authorize the significant deterioration of existing air quality in any portion of the State.

(b) Limiting concentrations specified for a twelve-month period or a calendar quarter shall not be exceeded. Limiting concentrations specified for one-hour, three-hour, eight-hour, and twenty-four-hour periods shall not be exceeded more than once in any twelve-month period.

(c) In the ambient air the concentration of carbon monoxide measured by a reference method shall not exceed:

(1) An average value of ten milligrams per cubic meter of air during any one-hour period[.]

; and

(2) An average value of five milligrams per cubic meter of air during any eight-hour period.

(d) In the ambient air the average concentration of nitrogen dioxide measured by a reference method during any twelve-month period shall not exceed seventy micrograms per cubic meter of air.

(e) In the ambient air the concentration of



suspended particulate matter measured by a reference method shall not exceed:

- (1) A geometric mean of sixty micrograms per cubic meter of air during any twelve-month period[.]; and
- (2) An average value of one hundred fifty micrograms per cubic meter of air during any twenty-four-hour period.

(f) In the ambient air the average concentration of ozone measured by a reference method during any one-hour period shall not exceed one hundred micrograms per cubic meter of air.

(g) In the ambient air the average concentration of sulfur dioxide measured by a reference method shall not exceed:

- (1) An average value of eighty micrograms per cubic meter of air in any twelve-month period[.];
- (2) An average value of three hundred sixty-five micrograms per cubic meter of air in any twenty-four-hour period[.]; and
- (3) An average value of one thousand three hundred micrograms per cubic meter of air in any three-hour period.

(h) In the ambient air the average concentration of lead measured as elemental lead by a reference method during any calendar quarter shall not exceed 1.5 micrograms per cubic meter of air.

(i) In the ambient air the average concentration of hydrogen sulfide measured by a reference method shall not exceed thirty-five micrograms per cubic meter of air (25 parts per billion) in any one-hour period. [Eff 11/29/82; am 4/14/86; am and comp

(Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7410, 7416; 40 C.F.R. Parts 50, 51) (Imp: HRS §342B-31; 42 U.S.C. §§7407, 7409, 7410, 7416; 40 C.F.R. Parts 50, 51)

\$11-59-5 Prohibition. No person, as defined in [HRS §342-1,] section 342B-1, HRS, shall cause, or allow, or contribute to a violation of any ambient air quality standard set forth in this chapter. [Eff 11/29/82; am and comp (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7410, 7416; 40 C.F.R. Part 51) (Imp: HRS §342B-31; 42 U.S.C. §§7407, 7409, 7410, 7416; 40 C.F.R. Part 51)

\$11-59-6 Penalties and remedies. Any person who violates [any provisions of \$11-59-5] section 11-59-5 is liable for penalties and remedies as provided for in Hawaii Revised Statutes, Chapter 342. [Eff

§11-59-6

11/29/82; am and comp (Auth: HRS  
§§342B-3, 342B-31; 42 U.S.C. §§7410, 7416; 40 C.F.R.  
Part 51) (Imp: HRS §342B-31; 42 U.S.C. §§7407, 7409,  
7410, 7416; 40 C.F.R. Part 51)

§11-59-7 Severability. If any provision of  
this chapter, or its application thereof to any  
persons or circumstances, is held invalid, the  
remainder of this chapter, or the application of the  
provision to other persons or circumstances, shall not  
be affected thereby." [Eff 11/29/82;  
comp (Auth: HRS §§342B-3, 342B-31; 42  
U.S.C. §§7410, 7416; 40 C.F.R. Part 51) (Imp: HRS  
§342B-31; 42 U.S.C. §§7407, 7409, 7410, 7416; 40  
C.F.R. Part 51)

2. Chapter 11-60, Hawaii Administrative Rules, entitled "Air Pollution Control" is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 60

AIR POLLUTION CONTROL

Subchapter 1 Prohibitions and General Requirements

\$11-60-1	Definitions
\$11-60-2	Prohibition of air pollution
\$11-60-3	Visible emissions
\$11-60-4	Control of motor vehicles
\$11-60-5	Fugitive dust
\$11-60-6	Incineration
\$11-60-7	Non-fossil fuel burning boilers
\$11-60-8	Process industries
\$11-60-9	Sulfur oxides from fuel combustion
\$11-60-10	Storage of volatile organic compounds
\$11-60-11	Volatile organic compound water separation
\$11-60-12	Pump and compressor requirements
\$11-60-13	Waste gas disposal
\$11-60-14	Malfunction of equipment reporting
\$11-60-15	Sampling, testing, and reporting methods
\$11-60-16	Public access to information
\$11-60-17	Air quality models
\$11-60-18	Operations of monitoring stations
\$11-60-19	Prevention of air pollution emergency episodes
\$11-60-20	Variances
\$11-60-21	Penalties and remedies
\$11-60-22	Severability
\$11-60-23 to 11-60-30	(Reserved)

Subchapter 2 Open Burning

\$11-60-31	Control of open burning
\$11-60-32	Agricultural burning, permit requirement
\$11-60-33	Agricultural burning, applications
\$11-60-34	Agricultural burning, "no-burn" days
\$11-60-35	Agricultural burning, record keeping and

monitoring  
§11-60-36 Agricultural burning, action on  
application  
§§11-60-37 to 11-60-39 (Reserved)

### Subchapter 3 Stationary Sources

§11-60-40 Applicability  
§11-60-41 Conditions for considering applications  
§11-60-42 Applications  
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§11-60-52 Cancellation of authority to construct  
§11-60-53 Suspension, revocation, and modification  
§11-60-54 Reporting discontinuance  
§§11-60-55 to 11-60-58 (Reserved)

### Subchapter 4 Prevention of Significant Deterioration Review

§11-60-59 Source applicability  
§11-60-60 Exemptions  
§11-60-61 Additional conditions for considering  
applications  
§11-60-62 Additional information to be submitted  
with applications  
§11-60-63 Ambient air increments  
§11-60-64 Redesignation

Historical Note: Chapter 11-60, Hawaii Administrative Rules, is based substantially on Public Health Regulations, Chapter 43, Air Pollution Control, Department of Health, State of Hawaii. [Eff 3/21/72, am 9/13/72, 1/15/73, 2/13/76; R 11/29/82]

## SUBCHAPTER 1

## PROHIBITIONS AND GENERAL REQUIREMENTS

S11-60-1 Definitions. As used in this chapter:

"Actual emissions" means the actual rate of emissions of a pollutant from an emissions unit.

- (1) In general, actual emissions as of a particular date shall equal the average rate in tons per year at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. The director shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period;
- (2) The director may presume that the source specific allowable emissions for the unit are equivalent to the actual emissions of the unit;
- (3) For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

"Agricultural burning" means open outdoor fires used in agricultural operations, growing of crops, raising of fowls or animals, forest management, or range improvements.

"Agricultural operation" means a [bonafide] bona fide agricultural activity with a license to engage in business, but shall not include school or governmental agricultural activities.

"Air pollutant" means smoke, charred paper, dust, soot, grime, carbon, noxious acids, fumes, gases, odors, particulate matter, or any combination of these.

"Air pollution" has the same meaning as in section 342-21, HRS.

"Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source [( ) unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both( )], and the most stringent of the following:

- (1) The applicable standards set forth in the Standards of Performance for New Stationary Sources or the National Emission Standards for Hazardous Air Pollutants;
- (2) Any applicable federally enforceable provisions of this chapter including those with a future compliance date; or
- (3) The emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

"Ambient air" means the general outdoor atmosphere.

"BTU" means British thermal unit.

"Baseline area" means any intrastate area [( ) and every part thereof( ) ] designated as attainment or unclassifiable under the Clean Air Act in which the major stationary source or major modification establishing the baseline date would construct or would have an air quality impact equal to or greater than one  $\mu\text{g}/\text{m}^3$  (annual average) of the pollutant for which the baseline date is established.

"Baseline concentration" means that ambient concentration level which exists in the impact area at the time of the applicable baseline date.

- (1) A baseline concentration is determined for each pollutant for which a baseline date is established and shall include:
  - (A) The actual emissions representative of sources in existence on the applicable baseline date, except as provided in paragraph (2); and
  - (B) The allowable emissions of major stationary sources which commenced construction before January 6, 1975 but were not in operation by the applicable baseline date.
- (2) The following shall not be included in the baseline concentration and will affect the applicable maximum allowable increase or increases:
  - (A) Actual emissions from any major stationary source on which construction commenced after January 6, 1975; and
  - (B) Actual emissions increases and decreases at any stationary source occurring after the baseline date.

"Baseline date" means the earliest date after August 7, 1977 on which the first complete application is submitted by a major stationary source or major modification subject to the prevention of significant deterioration review rules of this chapter or EPA PSD

regulations, whichever is earlier. The baseline date is established for each baseline area for each pollutant for which increments or other equivalent measures have been established if:

- (1) The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under the Clean Air Act for the pollutant on the date of its complete application; and
- (2) In the case of a major stationary source, the pollutant would be emitted in significant amounts, or, in the case of a major modification, there would be a significant net emissions increase of the pollutant.

"Begin actual construction" means in general, initiation of physical on-site construction activities which are of a permanent nature. Those activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in the method of operation, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

"Best available control technology" means an emissions limitation [(including a visible emission standard)] based on the maximum degree of reduction for a pollutant which would be emitted from any proposed stationary source or modification which the director on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for that source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of that pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable Standards of Performance for New Stationary Sources and the National Emission Standards for Hazardous Air Pollutants. If the director determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, or operational standard, or a combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. The standard, to the

degree possible, shall set forth the emissions reduction achievable by implementation of the design, equipment, work practice, or operation and shall provide for compliance by means which achieve equivalent results.

"Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person [(or persons under common control)] except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same two-digit code) as described in the "Standard Industrial Classification Manual, 1972," as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively).

"Clean Air Act" means the federal Clean Air Act (42 U.S.C. 7401 et seq.) as in effect on [date of adoption (] March 25, 1986[)].

"Commence" as applied to construction of a stationary source or modification means that the owner or operator has all necessary preconstruction approvals or permits and either has:

- (1) Begun, or caused to begin a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or
- (2) Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

"Complete" means, in reference to an application, that the application has been properly and fully answered, and timely submitted together with all fees and all required or requested information including tests, analyses, reports, maps, diagrams and other data, and that all other processing steps and requirements have been timely complied with.

"Construction" means any physical change or change in the method of operation [(including fabrication, erection, installation, demolition, or modification of an emissions unit)] which would result in a change in actual emissions.

"Department" means the department of health of the State of Hawaii.



"Director" means the director of health of the State of Hawaii or a duly authorized agent, officer, or inspector.

"Effluent water separator" means any tank, box, sump, or other container in which any volatile organic compounds floating on or entrained or contained in water entering such tank, box, sump, or other container is physically separated and removed from that water prior to outfall, drainage, or recovery of that water.

"Emission" means the act of releasing or discharging air pollutants into the ambient air from any source.

["Emissions unit" means any part of a stationary source which emits or may emit any pollutant subject to regulation under the Clean Air Act, chapter 11-59, administrative rules, or this chapter.]

"Emission limitation" means a requirement established by the director or the EPA administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction.

"Emissions unit" means any part of a stationary source which emits or may emit any pollutant subject to regulation under the Clean Air Act, chapter 11-59, or this chapter.

"EPA" means the United States Environmental Protection Agency as established by title 40 of the code of federal regulations, part 1.1 et seq., as it existed on March 25, 1986.

"EPA PSD regulations" means the federal regulations for the prevention of significant deterioration of air quality contained in title 40 of the code of federal regulations, section 52.21 as in effect on [date of adoption ( ) March 25, 1986( )].

"Federal land manager" means, with respect to any lands in the United States, the Secretary of the department with authority over those lands.

"Federally enforceable" means all limitations and conditions which are enforceable by the EPA administrator, including those requirements developed pursuant to the Standards of Performance for New Stationary Sources or the National Emission Standards for Hazardous Air Pollutants, any permit requirements established pursuant to EPA PSD regulations, and any applicable provisions of this chapter approved by EPA administrator as part of the Hawaii state implementation plan.

"Fuel-burning equipment" means any furnace,

boiler, apparatus, stack, and all appurtenances thereto, used in the process of burning fuel for the primary purpose of producing heat or power by heat transfer.

"Fugitive dust" means uncontrolled emission of solid airborne particulate matter from any source other than combustion.

"Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"HRS" means Hawaii Revised Statutes.

"Impact area" means the largest area in a baseline area in which a major source or major modification would have an air quality impact equal to or greater than the concentrations listed below for the pollutant for which a baseline date is established.

Sulfur dioxide

Annual average	one $\mu\text{g}/\text{m}^3$
Twenty-four-hour average	five $\mu\text{g}/\text{m}^3$
Three-hour average	twenty-five $\mu\text{g}/\text{m}^3$

Total suspended particulate

Annual average	one $\mu\text{g}/\text{m}^3$
Twenty-four-hour average	five $\mu\text{g}/\text{m}^3$

Nitrogen dioxide

Annual average	one $\mu\text{g}/\text{m}^3$
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Carbon monoxide

Eight-hour average	0.5 $\text{mg}/\text{m}^3$
One-hour average	two $\text{mg}/\text{m}^3$

" $\text{Mg}/\text{m}^3$ " means milligrams per cubic meter.

"Major modification" means any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Clean Air Act.

- (1) Any net emissions increase that is considered significant for volatile organic compounds shall be considered significant for ozone.
- (2) A physical change or change in the method of operation shall not include:
  - (A) Routine maintenance, repair, and replacement, such that replacement does not constitute reconstruction;
  - (B) Use of an alternative fuel or raw material by reason of an order under sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (15 [USCS] U.S.C. §§791 et[.] seq.) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act (16 [USCS] U.S.C.

- §§791a et[.] seq.);
- (C) Use of an alternative fuel by reason of an order or rule under the Clean Air Act;
  - (D) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;
  - (E) Use of an alternative fuel or raw material by a stationary source located in an attainment area which:
    - (i) The source was capable of accommodating before January 6, 1975, unless the change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975; or
    - (ii) The source is approved to use under any permit issued pursuant to EPA PSD regulations by EPA or pursuant to the prevention of significant deterioration review rules of this chapter;
  - (F) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition which was established after January 6, 1975; or
  - (G) Any change in ownership at a stationary source.

"Major stationary source" means:

- (1) Any of the following sources of air pollutants which emits, or has the potential to emit, one hundred tons per year or more of any pollutant subject to regulation under the Clean Air Act: Fossil fuel-fired steam electric plants of more than two hundred fifty million British thermal units per hour heat input, coal cleaning plants [( )with thermal dryers( )], kraft pulp mills, portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than two hundred fifty tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven

batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, fossil fuel boilers [(or combination thereof)] totaling more than two hundred fifty million British thermal units per hour heat input, petroleum storage and transfer units with a total storage capacity exceeding three hundred thousand barrels, taconite ore processing plants and charcoal production plants[.];

- (2) Notwithstanding the stationary source size specified in paragraph (1) any stationary source which emits, or has the potential to emit two hundred fifty tons per year or more of any air pollutant subject to regulation under the Clean Air Act; [or]
- (3) Any physical change that would occur at a stationary source not otherwise qualifying under paragraphs (1) and (2) as a major stationary source, if the changes would constitute a major stationary source by itself[.]; or
- (4) A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

"Modification" means any physical change to or change in the method of operation, including switching to a fuel with a higher sulfur or ash content, of a stationary source which changes the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted.

"NAAQS" means any National Ambient Air Quality Standards contained in title 40 of the code of federal regulations, part 50 as in effect on [date of adoption (] March 25, 1986[)] .

"National Emission Standards for Hazardous Air Pollutants" means any federal emission standards contained in title 40 of the code of federal regulations, part 61 as in effect on [date of adoption (] March 25, 1986[)] .

"Necessary preconstruction approvals or permits" means those permits or approvals under federal air quality control laws and regulations, and this chapter.

"Net emissions increase" means the amount by which the sum of any increase in actual emission from a particular physical change or change in method of operation at a stationary source and any other increases and decreases in actual emissions at the source that are contemporaneous with the particular

change and are otherwise creditable exceeds zero.

- (1) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:
  - (A) The date five years before construction on the particular change commences; and
  - (B) The date that the increase from the particular change occurs.
- (2) An increase or decrease in actual emissions is creditable only if the director or EPA administrator has not relied on it in issuing any permit which is still in effect for the source under the prevention of significant deterioration review rules of this chapter or EPA PSD regulations when the increase in actual emissions from the particular change occurs.
- (3) An increase or decrease in actual emissions of sulfur dioxide or particulate matter which occurs before the applicable baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.
- (4) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.
- (5) A decrease in actual emissions is creditable only to the extent that:
  - (A) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;
  - (B) It is federally enforceable at and after the time that actual construction on the particular change begins; and
  - (C) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.
- (6) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed one hundred eighty days.

"Opacity" means a state which renders material partially or wholly impervious to rays of light and causes obstruction of an observer's view.

"Open burning" means the burning of any matter in such a manner that the products of combustion resulting from the burning are emitted directly into the ambient air without passing through an adequate stack or flare.

"Ppm" means parts per million by volume.

"Particulate matter" means any material, except water in uncombined form, that is or has been airborne and exists as a liquid or a solid at standard conditions.

"Person" means an individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this [state] State, any other state or political subdivision or agency thereof, or any legal successor, representative, or agency of the foregoing.

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforce-able. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this chapter, secondary emissions shall be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

"Significant" means:

- (1) In reference to emissions of any of the following pollutants, a rate of emissions that would equal or exceed any of the

following rates:

#### Pollutant and Emissions Rate

Carbon monoxide: one hundred tons per year (tpy);

Nitrogen oxides: forty tpy;

Sulfur dioxide: forty tpy;

Particulate matter: twenty-five tpy;

Ozone: forty tpy of volatile organic compounds;

Lead: 0.6 tpy;

Asbestos: 0.007 tpy;

Beryllium: 0.0004 tpy;

Mercury: 0.1 tpy;

Vinyl chloride: one tpy;

Fluorides: three tpy;

Sulfuric acid mist: seven tpy;

Hydrogen sulfide ( $H_2S$ ): ten tpy;

Total reduced sulfur ( $H_2S$ , methyl mercaptan, dimethyl sulfide, and dimethyl disulfide): ten tpy; or

Reduced sulfur compounds ( $H_2S$ , carbon disulfide and carbonyl sulfide): ten tpy.

- (2) [In reference to emissions of] Any emissions rate for a pollutant subject to regulation under the Clean Air Act that paragraph (1) does not list[, any emissions rate].
- (3) Notwithstanding paragraph (1), any emissions rate or any net emissions increase associated with a major stationary source or major modification which would construct within ten kilometers of a class I area, and have an impact on such area equal to or greater than one  $\mu g/m^3$  (twenty-four-hour average).

"Smoke" means the gaseous products of burning carbonaceous materials made visible by the presence of small particles of carbon.

"Source" means any property, real or personal, which emits or may emit any air pollutant.

"Stack" means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct but not including flares.

"Standards of Performance for New Stationary Sources" means any federal emission standards contained in title 40 of the code of federal regulations, part 60 as in effect on [date of adoption] March 25, 1986[)].

"Stationary source" means any building, structure, facility, or installation which emits or may emit any

air pollutant subject to regulation under the Clean Air Act, chapter 11-59[, administrative rules], or this chapter.

"Submerged fill pipe" means any fill pipe the discharged opening of which is entirely submerged when the liquid level is six inches (fifteen centimeters) above the bottom of the tank; or when applied to a tank which is loaded from the side, shall mean any fill pipe the discharge opening of which is eighteen inches (forty-five centimeters) above the bottom of the tank.

"Ug/m<sup>3</sup>" means micrograms per cubic meter.

"Volatile organic compound" means any compound containing carbon and hydrogen or carbon and hydrogen in combination with other elements. Volatile organic compound excludes: methane; ethane; methylene chloride; 1, 1, 1 - trichloroethane (methyl chloroform); trichlorotrifluoroethane (CFC-113) (Freon 113); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (CFC-22); trifluoromethane (FC-23); dichlorotetrafluoroethane (CFC-114); and chloropentafluoroethane (CFC-115). [Eff 11/29/82; am and comp 4/14/86; am and comp

] (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

§11-60-2 Prohibition of air pollution. No person shall engage in, cause, allow, or maintain any activity which causes air pollution without first securing written approval from the director. Exemption from the requirement of authority to construct or permit to operate shall not relieve the person from fully complying with all applicable provisions of this chapter and with all applicable state and county laws or rules, or federal laws and regulations. [Eff 11/29/82; am, ren §11-60-2 and comp 4/14/86; comp

] (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

§11-60-3 Visible emissions. (a) Visible emission restrictions for stationary sources which commenced construction or were in operation before March 21, 1972[.], shall be as follows:

- (1) No person shall cause or permit the emission of visible air pollutants of a density equal to or darker than forty per cent opacity,



- except as provided in paragraph (2)[.];
- (2) A person may discharge into the atmosphere from any single source of emission, for a period aggregating not more than six minutes in any sixty minutes, air pollutants of a density not darker than sixty per cent opacity when building a new fire or when breakdown of equipment occurs.
- (b) Visible emission restrictions for stationary sources, the construction, modification, or relocation of which commenced after March 20, 1972[.], shall be as follows:
- (1) No person shall cause or permit the emission of visible air pollutants of a density equal to or darker than twenty per cent opacity, except as provided in paragraph (2)[.];
- (2) A person may discharge into the atmosphere from any single source of emission, for a period aggregating not more than six minutes in any sixty minutes, air pollutants of a density not darker than sixty per cent opacity when building a new fire or when breakdown of equipment occurs.
- (c) Compliance shall be determined by procedures for evaluating actual opacity readings as described in "Guidelines for Evaluation of Visible Emission" (EPA Document No. EPA-340/1-75-007, April 1975).
- (d) Exceptions for uncombined water. The provisions of subsections (a) and (b) shall not apply to any emission which, except for the presence of uncombined water, such as condensed water vapor, would not be in violation of those provisions. [Eff 11/29/82; am, ren S11-60-3 and comp 4/14/86; am and comp ] (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

S11-60-4 Control of motor vehicles. (a) No gasoline-powered motor vehicle shall be operated which emits visible smoke while upon streets, roads, [and] or highways.

(b) No diesel-powered motor vehicle shall be operated which emits visible smoke for a period of more than five consecutive seconds while upon streets, roads, [and] or highways.

(c) No person shall cause, suffer, or allow to keep any engine in operation while the motor vehicle is stationary at a loading zone, parking, or servicing area, route terminal, or other off street areas,

except:

- (1) During adjustment or repairing of the engine at a garage or similar place of repair;
  - (2) During operation of ready-mix trucks, cranes, hoists, and certain bulk carriers, or other auxiliary equipment built onto the vehicle or equipment that require power take-off from the engine, provided that there is no visible discharge of smoke and the equipment is being used and operated for the purposes as originally designed and intended. This exception shall not apply to operations of air conditioning equipment or systems;
  - (3) During the loading or unloading of passengers, not to exceed three minutes; or
  - (4) During the buildup of pressure at the start-up and cooling down at the closing down of the engine for a period of not more than three minutes.
- (d) No person shall remove, dismantle, fail to maintain, or otherwise cause to be inoperative any equipment or feature constituting an operational element of the air pollution control system or mechanism of a motor vehicle as required pursuant to the provisions of the Clean Air Act except as permitted or authorized by law. [Eff 11/29/82; am, ren §11-60-4 and comp 4/14/86; am and comp ] (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

§11-60-5 Fugitive dust. (a) No person shall cause or permit any materials to be handled, transported, or stored; or a building, its appurtenances, or a road to be constructed, altered, repaired, or demolished without taking reasonable precautions, as approved by the director, to prevent particulate matter from becoming airborne. Examples of some reasonable precautions are:

- (1) Use, where possible, of water or chemicals for control of dust in the demolition of existing buildings or structures, construction operations, the grading of roads, or the clearing of land;
- (2) Application of asphalt, water, or suitable chemicals on roads, materials stockpiles, and other surfaces which can give rise to airborne dusts;

- (3) Installation and use of hoods, fans, and fabric filters to enclose and vent the handling of dusty materials. Adequate containment methods shall be employed during sandblasting or other similar operations;
- (4) Covering, at all times when in motion, open-bodied trucks transporting materials likely to give rise to airborne dusts;
- (5) Conduct [of] agricultural operations such as tilling of land, application of fertilizers, etc. in such manner as to minimize airborne dust;
- (6) The paving of roadways and their maintenance in a clean condition; and
- (7) The prompt removal of earth or other material from paved streets onto which earth or other material has been transported by trucking or earth moving equipment, erosion by water, or other means.

(b) Except for persons engaged in agricultural operations or persons who can demonstrate to the director that best practical operation or treatment is being implemented, no person shall cause or permit the discharge of visible emissions of fugitive dust beyond the lot line of the property on which the emissions originate. [Eff 11/29/82; am, ren S11-60-5 and comp 4/14/86; am and comp ] (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

S11-60-6 Incineration. (a) No person shall cause or permit the emission from any incinerator of particulate matter to exceed 0.20 pounds per one hundred pounds (two grams per kilogram) of refuse charged.

(b) Emission tests shall be conducted at maximum burning capacity of the incinerator.

(c) The burning capacity of an incinerator shall be the manufacturer's or designer's guaranteed maximum rate or such other rate as may be determined by the director in accordance with good engineering practices. In cases of conflict, the determination made by the director shall govern.

(d) For the purposes of this chapter, the total of the capacities of all furnaces within one system shall be considered as the incinerator capacity. [Eff 11/29/82; am, ren S11-60-6 and comp 4/14/86; comp ] (Auth: HRS §§342B-3, 342B-31; 42

U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)  
(Imp: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410,  
7416; 40 C.F.R. Parts 50, 51, 52)

\$11-60-7 Non-fossil fuel burning boilers. (a)

No person shall cause or permit the emissions of particulate matter from each bagasse burning boiler and its drier or driers in excess of 0.4 pound per hundred pounds of bagasse as burned. The bagasse combustion rate shall be determined using the procedures described in "Method to Calculate Bagasse Combustion Rate" (Hawaiian Sugar Planters' Association, December 26, 1975) and "Correction of the Flue Gas Rate for Scrubber Moisture" (Hawaiian Sugar Planters' Association, August 31, 1976).

(b) No person shall cause or permit the emissions of particulate matter from other non-fossil fuel burning boilers in excess of 0.4 pound per hundred pounds of non-fossil fuel as burned. [Eff 11/29/82; am, ren \$11-60-7 and comp 4/14/86; comp ] (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

\$11-60-8 Process industries. (a)

No person shall cause or permit the emission of particulate matter in any one hour from any stack or stacks, except for incinerators and non-fossil fuel burning boilers in excess of the amount shown in table 8-1 for the process weight rate allocated to such source.

(b) Process weight per hour is the total weight of all materials introduced into any specific process that may cause any emission of particulate matter through any stack or stacks. Solid fuels charged shall be considered as part of the process weight, but liquid and gaseous fuels and combustion air shall not. For a cyclical or batch operation, the process weight per hour shall be derived by dividing the total process weight by the number of hours in one complete operation from the beginning of any given process to the completion thereof, excluding any time during which the equipment is idle. For a continuous operation, the process weight per hour shall be derived for a typical period of time by the number of hours of the period.

(c) Where the nature of any process or operation or the design of any equipment is such as to permit more than one interpretation of this chapter, the

interpretation that results in the minimum value for the allowable emission shall apply.

(d) For purposes of this chapter, a process is any method, reaction, or operation whereby materials introduced into the process undergo physical or chemical change. A specific process, independent or production unit, is one which includes all of the equipment and facilities necessary for the completion of the transformation of the materials to produce a physical or chemical change. There may be several specific processes in series necessary to the manufacture of a product. However, where there are parallel series of specific processes, the similar parallel specific processes shall be considered as a specific process for emission rule. [Eff 11/29/82; amended S11-60-8 and comp 4/14/86; comp ]  
(Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

TABLE 8-1

<u>Process Weight Rate</u> <u>pounds per hour</u>	<u>Rate of Emission</u> <u>pounds per hour</u>
100	0.551
200	0.877
400	1.40
600	1.83
800	2.22
1,000	2.58
1,500	3.38
2,000	4.10
2,500	4.76
3,000	5.38
3,500	5.96
4,000	6.52
5,000	7.58
6,000	8.56
7,000	9.49
8,000	10.4
9,000	11.2
12,000	13.6
16,000	16.5
18,000	17.9
20,000	19.2
30,000	25.2
40,000	30.5
50,000	35.4
60,000 or more	40.0

Interpolation of the data in this table for process weight rates up to sixty thousand pounds per hour shall be accomplished by use of the equation  $E = 4.10 p^{0.67}$ , E = rate of emission in pounds per hour and p = process weight rate in tons per hour.

S11-60-9 Sulfur oxides from fuel combustion.

(a) No person shall burn, sell, or make available for sale for burning in fuel burning equipment, any fuel containing in excess of two [per cent] percent sulfur by weight except for fuel used in ocean-going vessels.

(b) No person operating fossil-fuel fired power and steam generating facilities, having a power generating output in excess of twenty-five megawatts or a heat input greater than two hundred fifty million BTU[/] per hour shall burn any fuel containing in excess of 0.5 percent sulfur by weight.

(c) The sale and use of fuels prohibited by S11-60-9(a) and (b) may be allowed when the director['s] has determined that the use of such other fuels will not violate the ambient air quality standards for oxides of sulfur. [Eff 11/29/82; am, ren S11-60-9 and comp 4/14/86; am and comp ] (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-31, 342B-30; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

S11-60-10 Storage of volatile organic compounds.

(a) Except as provided in subsection (c), no person shall place, store, or hold in any stationary tank, reservoir, or other container of more than forty thousand-gallon (one hundred fifty thousand-liter) capacity any volatile organic compound which, as stored, has a true vapor pressure equal to or greater than 1.5 pounds per square inch absolute unless the tank, reservoir, or other container is a pressure tank capable of maintaining working pressures sufficient at all times to prevent vapor or gas loss to the atmosphere or is designed, and equipped, with one of the following vapor loss control devices:

- (1) A floating roof, consisting of a pontoon type, double deck type roof or internal floating cover, which will rest on the surface of the liquid contents and be equipped with a closure seal or seals to close the space between the roof edge and

tank wall. This control equipment shall not be permitted if the volatile organic compounds have a vapor pressure of eleven pounds per square inch absolute (five hundred sixty-eight millimeters of mercury) or greater under actual storage conditions. All tank gauging or sampling devices shall be gas-tight except when tank gauging or sampling is taking place[.];

- (2) A vapor recovery system, consisting of a vapor gathering system capable of collecting the volatile organic compound vapors and gases discharged, and a vapor disposal system capable of processing such volatile organic vapors and gases so as to prevent their emission to the atmosphere and with all tank gauging and sampling devices gas-tight except when gauging or sampling is taking place[.]; or
- (3) Other equipment or means of equal efficiency for purposes of air pollution control as may be approved by the director.

(b) No person shall place, store, or hold in any new stationary storage vessel of more than the two hundred fifty-gallon (nine hundred fifty-liter) capacity any volatile organic compound unless such vessel is equipped with a permanent submerged fill pipe or is a pressure tank as described in subsection (a) or is fitted with a vapor recovery system as described in subsection (a) (2).

(c) Underground tanks shall be exempted from requirements of subsection (a) if the total volume of volatile organic compounds added to and taken from a tank annually does not exceed twice the volume of the tank. [Eff 11/29/82; am, ren S11-60-10 and comp 4/14/86; am and comp ] (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

S11-60-11 Volatile organic compound water separation. (a) No person shall use any compartment of any single or multiple compartment volatile organic compound water separator which receives effluent water containing two hundred gallons (seven hundred sixty liters) a day or more of any volatile organic compound from any equipment processing, refining, treating, storing, or handling volatile organic compounds having a Reid vapor pressure of 0.5 pounds per square inch or

greater unless such compartment is equipped with one of the vapor loss control devices in subsections (b) to (e), properly installed, in good working order, and in operation[.];

(b) A container having all openings sealed and totally enclosing the liquid contents. All gauging and sampling devices shall be gas-tight except when gauging or sampling is taking place[.];

(c) A container equipped with a floating roof, consisting of a pontoon type, double deck type roof, or internal floating cover, which will rest on the surface of the contents and be equipped with a closure seal or seals to close the space between the roof edge and container wall. All gauging and sampling devices shall be gas-tight except when gauging or sampling is taking place[.];

(d) A container equipped with a vapor recovery system consisting of a vapor gathering system capable of collecting the organic vapors and gases discharged and a vapor disposal system capable of processing such organic vapors and gases so as to prevent their emission to the atmosphere with all container gauging and sampling devices gas-tight except when gauging and sampling is taking place[.]; or

(e) A container having other equipment of equal efficiency for purposes of air pollution control as may be approved by the director. [Eff 11/29/82; am, ren \$11-60-11 and comp 4/14/86; am and comp ]  
(Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

\$11-60-12 Pump and compressor requirements. All pumps and compressors handling volatile organic compounds having a Reid vapor pressure of 1.5 pounds per square inch or greater shall have mechanical seals or other equipment of equal efficiency for purposes of air pollution control as may be approved by the director. [Eff 11/29/82; am, ren \$11-60-12 and comp 4/14/86; comp ] (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

\$11-60-13 Waste gas disposal. No person shall cause or permit the emission of gas stream containing volatile organic compounds from a vapor blowdown system or emergency relief unless these gases are burned by



smokeless flares, or an equally effective control device as approved by the director. [Eff 11/29/82; amended S11-60-13 and comp 4/14/86; comp ]  
 (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

S11-60-14 Malfunction of equipment reporting.

(a) In the case of shutdown of air pollution control equipment for necessary scheduled maintenance, the intent to shut down such equipment shall be reported to the director at least twenty-four hours prior to the planned shut down. The prior notice shall include, but is not limited to, the following:

- (1) Identification of the specific facility to be taken out of service as well as its location and permit number;
- (2) The expected length of time that the air pollution control equipment will be out of service;
- (3) The nature and quantity of emissions of air pollutants likely to be emitted during the shutdown period;
- (4) Measures such as the use of off-shift labor and equipment that will be taken to minimize the length of the shut down period; and
- (5) The reasons that it would be impossible or impractical to shut down the source operation during the maintenance period.

(b) In the event that any emission source, air pollution control equipment, or related facility starts up, shuts down, or breaks down in such a manner as to cause the emission of air pollutants in violation of applicable rules, the person responsible for the equipment shall immediately notify the department of the failure or breakdown.

- (1) The person responsible shall provide the following information within five days of the notification:
  - (A) Identification of emission points;
  - (B) Magnitude of the excess emissions;
  - (C) Time and duration of the excess emissions;
  - (D) Identity of the process or control equipment causing the excess emissions;
  - (E) Cause and nature of the excess emissions;
  - (F) Description of the steps taken to remedy the situation, prevent a

recurrence, limit the excessive emissions, and to assure that the breakdown does not interfere with the attainment and maintenance of the NAAQS;

- (G) Documentation that the equipment or process [were] was at all times maintained and operated in a manner consistent with good practice for minimizing emissions; and
  - (H) The excess emissions are not part of a recurring pattern indicative of inadequate design, operation or maintenance.
- (2) Upon receipt of the report of excessive emissions and required information, the department may issue a notice of violation to institute an enforcement procedure to provide the source an opportunity to fully explain the circumstances of the violation. The information submitted and all other information to further explain the circumstances shall be utilized to assess the need for further action.

[Eff 11/29/82; am, ren S11-60-14 and comp 4/14/86; am and comp ] (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

S11-60-15 Sampling, testing, and reporting methods. (a) All sampling and testing shall be made and the results calculated in accordance with reference methods specified by EPA, or in the absence of an EPA reference method, test procedures approved by the director. All tests shall be made under the direction of persons knowledgeable in the field of air pollution control.

(b) The department may conduct tests of emissions of air pollutants from any source. Upon request of the director, the person responsible for the source to be tested shall provide necessary ports in stacks or ducts and such other safe and proper sampling and testing facilities, exclusive of instruments and sensing devices, as may be necessary for proper determination of the emissions of air pollutants.

(c) Upon notification from the director, an

owner or operator of any stationary source shall maintain a file on information concerning pertinent process and material flow, fuels used, nature and amount and time periods or durations of emissions, or any other information as may be deemed necessary by the director to determine whether the stationary source complies with applicable emission limitations, NAAQS or any state ambient air quality standard or other provisions of this chapter in a permanent form suitable for inspection or in a manner specified by the director.

(d) The information recorded shall be summarized and reported to the director, on forms furnished by the director, and shall be submitted within forty-five days after the end of the reporting period. Reporting periods shall be January 1 - June 30 and July 1 - December 31 or any other period specified by the director, except that the initial reporting period shall commence on the date the director issues notification of the record keeping requirements.

(e) Information recorded by the owner or operator and copies of the summarizing reports submitted to the director shall be retained by the owner or operator for two years after the date on which the pertinent report is submitted.

(f) Reports obtained from owners or operators of stationary sources shall be correlated with applicable emission limitations and other requirements and shall be made available to the public during normal business hours at the department. [Eff 11/29/82; am and comp 4/14/86; am and comp ] (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

S11-60-16 Public access to information. (a) All reports pertaining to performance test results, ambient monitoring data and emissions inventory data, applications for permits and forms, and the supporting documentation submitted as part thereof to the department as requirements of this chapter shall be considered public records and available for public inspection, except for information of a confidential nature concerning secret processes or secret methods of manufacture. Any person desiring to request confidential treatment shall make the request in writing to the director at the time of submission of the confidential information, [identifying] and identify the specific [data] information that is to be

accorded confidentiality [due to its nature concerning] because it concerns secret processes or secret methods of manufacture[, and with]. With respect to each item of confidential [data providing] information, the person requesting confidential treatment shall provide the following

[documentations:] documentation:

- (1) If, and how, each [data] item of information concerns secret processes or secret methods of manufacture;
- (2) Who has access to [each data;] each item of information;
- (3) What steps have been taken to protect the secrecy of each [data; and] item of information; and
- (4) Why it is believed each [data] item of information must be accorded confidential treatment and the anticipated prejudice should disclosure be made.

Any [data] information submitted to the department without a request for confidential treatment in accordance with this section shall be considered a public record.

(b) All requests for public records shall be in writing, addressed to the director, and shall identify or describe the character of the requested record. Upon approval by the director, the requested public record shall be available to the [requestor] requester for inspection and copying during established office hours. The director shall charge the [requestor] requester a reasonable cost for reproduction of any public record, but not less than twenty-five cents per page, sheet, or fraction thereof. [Eff and comp 4/14/86; am and ccmp ] (Auth: HRS §§91-2, 92-21, 92-50, 92-51, 342B-6, 342B-15; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52, 60, 61) (Imp: HRS §§91-2, 91-21, 92-50, 92-51, 342B-6, 342B-15; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52, 60, 61)

S11-60-17 Air quality models. (a) All estimates of ambient concentrations required shall be based on the applicable air quality models, data bases, and other requirements specified in the "Guideline on Air Quality Models[" (OAQPS 1.2-080, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, N.C. 27711, April 1978).] (Revised)" (1986). Supplement A (1987). EPA Publication No. 450/2-78-027R.

(b) Where an air quality impact model specified in the "Guideline on Air Quality Models" is inappropriate, the model may be modified or another model substituted on written request to the director. The public shall be provided the opportunity to comment. Written approval of the director [and the EPA administrator] shall be obtained for any modification or substitution. Methods such as those outlined in the "Workbook for the Comparison of Air Quality Models" (U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, N.C. 27711, May 1978) may be used to determine the comparability of air quality models. [Eff and comp 4/14/86; am and comp ]

(Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52, 60, 61) (Imp: HRS §§342B-3, 342B-14, 342B-31, 342B-30; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52, 60, 61)

S11-60-18 Operations of monitoring stations.

The EPA monitoring requirements of Appendix B to 40 CFR Part 58, "Ambient Air Quality Surveillance," as in effect on [date of adoption (]March 25, 1986[)], shall be met as a minimum during the operation of any monitoring stations required by the director or this chapter. [Eff and comp 4/14/86; am and comp ]

(Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52, 60, 61) (Imp: HRS §§342B-3, 342B-14, 342B-31, 342B-30; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52, 58, 60, 61)

S11-60-19 Prevention of air pollution emergency episodes. (a) Notwithstanding any other provision of this chapter, this section is designed to prevent the excessive buildup of air contaminants during air pollution episodes, thereby preventing the occurrence of any emergency due to the effects of these contaminants on the public health.

(b) Conditions justifying the proclamation of an air pollution alert, air pollution warning, or air pollution emergency shall be deemed to exist whenever the director determines that the accumulation of air contaminants in any place is attaining or has attained levels which could, if such levels are sustained or exceeded, lead to a threat to the health of the public. In making this determination, the director shall be guided by the criteria set forth in subsections (c) to (g).

(c) "Air pollution forecast": An internal watch by the department shall be actuated by a national weather service advisory that atmospheric stagnation advisory is in effect or the equivalent local forecast of stagnant atmospheric conditions.

(d) "Alert": The alert level is that concentration of pollutants at which first stage control action is to begin. An alert shall be declared, health advisories issued, and source activities curtailed as ordered by the director when any one of the following levels is reached:

- (1)  $\text{SO}_2$  - eight hundred  $\mu\text{g}/\text{m}^3$  (0.3 ppm), twenty-four-hour average;
- (2) Particulate matter - three hundred seventy-five  $\mu\text{g}/\text{m}^3$ , twenty-four-hour average;
- (3)  $\text{SO}_2$  and particulate matter combined - product of  $\text{SO}_2$ ,  $\mu\text{g}/\text{m}^3$ , twenty-four-hour average and particulate matter,  $\mu\text{g}/\text{m}^3$ , twenty-four-hour average equal to  $65 \times 10^3$ ;
- (4) CO - seventeen  $\text{mg}/\text{m}^3$  (fifteen ppm), eight-hour average;
- (5) Ozone - four hundred  $\mu\text{g}/\text{m}^3$  (0.2 ppm), one-hour average; [or]
- (6)  $\text{NO}_2$  - one thousand one hundred thirty  $\mu\text{g}/\text{m}^3$  (0.6 ppm), one-hour average; two hundred eighty-two  $\mu\text{g}/\text{m}^3$  (0.15 ppm), twenty-four-hour average;

and meteorological conditions are such that this condition can be expected to continue for twelve or more hours.

(e) "Warning": The warning level indicates that air quality is continuing to degrade and that additional abatement actions are necessary. A warning shall be declared, health advisories issued, and source activities curtailed or terminated as ordered by the director when any one of the following levels is reached:

- (1)  $\text{SO}_2$  - one thousand six hundred  $\mu\text{g}/\text{m}^3$  (0.6 ppm), twenty-four-hour average;
- (2) Particulate matter - six hundred twenty-five  $\mu\text{g}/\text{m}^3$ , twenty-four-hour average;
- (3)  $\text{SO}_2$  and particulate matter combined - product of  $\text{SO}_2$ ,  $\mu\text{g}/\text{m}^3$ , twenty-four-hour average and particulate matter,  $\mu\text{g}/\text{m}^3$ , twenty-four-hour average equal to  $261 \times 10^3$ ;
- (4) CO - thirty-four  $\text{mg}/\text{m}^3$  (30 ppm), eight-hour average;
- (5) Ozone - eight hundred  $\mu\text{g}/\text{m}^3$  (0.4 ppm), one-hour average; [or]
- (6)  $\text{NO}_2$  - two thousand two hundred sixty  $\mu\text{g}/\text{m}^3$  (1.2 ppm), one-hour average; five hundred

sixty-five  $\mu\text{g}/\text{m}^3$  (0.3 ppm), twenty-four-hour average;

and meteorological conditions are such that this condition can be expected to continue for twelve or more hours

(f) "Emergency": The emergency level [is reached] shall be declared and the public evacuated from the affected area if so recommended by the director, civil defense, or the police department when the warning level for a pollutant has been exceeded and:

- (1) The concentrations of the pollutant are continuing to increase; [or]
- (2) The director determines that, because of meteorological or other facts, the concentrations will continue to increase; or
- (3) When any one of the following levels is reached:
  - (A)  $\text{SO}_2$  - two thousand one hundred  $\mu\text{g}/\text{m}^3$  (0.8 ppm), twenty-four-hour average;
  - (B) Particulate matter - eight hundred seventy-five  $\mu\text{g}/\text{m}^3$ , twenty-four-hour average;
  - (C)  $\text{SO}_2$  and particulate matter combined - product of  $\text{SO}_2$ ,  $\mu\text{g}/\text{m}^3$ , twenty-four-hour average and particulate matter,  $\mu\text{g}/\text{m}^3$ , twenty-four-hour average equal to  $393 \times 10^3$ ;
  - (D) CO - forty-six  $\text{mg}/\text{m}^3$  (forty ppm), eight-hour average;
  - (E) Ozone - one thousand  $\mu\text{g}/\text{m}^3$  (0.5 ppm), one-hour average; [or]
  - (F)  $\text{NO}_2$  - three thousand  $\mu\text{g}/\text{m}^3$  (1.6 ppm), one-hour average; seven hundred fifty  $\mu\text{g}/\text{m}^3$  (0.4 ppm), twenty-four-hour average.

(g) "Termination": Once declared, any episode level reached by application of these criteria shall remain in effect until the criteria for that level are no longer met. At that time, the next lower episode level shall be assumed. [Eff 11/29/82; am, ren S11-60-19 and comp 4/14/86; am and comp ]  
 (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-8, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

S11-60-20 Variances. Variances and variance applications shall comply with section 342B-5, HRS, except that, no variance shall prevent or interfere

§11-60-20

with the maintenance or attainment of NAAQS. Any application for a variance shall include a calculation and description of any change in emissions and the expected ambient air quality concentrations. [Eff 11/29/82; am, ren §11-60-20 and comp 4/14/86; comp ] (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-5, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

§11-60-21 Penalties and remedies. Any person who violates any provision of this chapter shall be subject to the penalties and remedies provided for in sections 342B-7, 342B-9, 342B-9.5, and 342B-12, HRS. [Eff 11/29/82; am, ren §11-60-21 and comp 4/14/86; comp ] (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-7, 342B-9, 342B-10, 342B-12, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

§11-60-22 Severability. If any provision of this chapter or its application to any person or circumstance is held invalid, the application of such provision to other persons or circumstances and the remainder of this chapter shall not be affected thereby. [Eff 11/29/82; ren §11-60-22 and comp 4/14/86; comp ] (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

§§11-60-23 to 11-60-30 (Reserved)



SUBCHAPTER 2

OPEN BURNING

§11-60-31 Control of open burning. (a) Except as provided in subsection (b) and section 11-60-32 no person shall cause, permit, or maintain any open burning. Any open burning is the responsibility of the person owning, operating, or managing the property, premises, business establishment, or industry where the open burning is occurring.

- (b) Subsection (a) shall not apply to:
  - (1) Open fires for the cooking of food;
  - (2) Fires for recreational, decorative, or ceremonial purposes as approved by the director;
  - (3) Fires to abate a fire hazard, providing the hazard is so declared by the fire department or district forester having jurisdiction;
  - (4) Fires for prevention or control of disease or pests as approved by the director;
  - (5) Fires for training personnel in the methods of fighting fires;
  - (6) Fires for the disposal of dangerous materials, where there is no alternate method of disposal and burning is approved in advance by the director;
  - (7) Fires for residential bathing purposes; and
  - (8) Fires for the burning of leaves, grass, weeds, wood, paper, and similar materials on one's own premises, not exceeding four family units and twenty-five pounds per day, per unit, provided such burning is [not]:
    - (A) Not within fifty feet of any habitable building[, is attended];
    - (B) Attended or supervised by an adult person; [and is completed]
    - (C) Completed within daylight hours (9:00 a.m. to 6:00 p.m.); [provided that such burning shall not be]
    - (D) Not in violation of the regulations of other fire control agencies; and [shall be subject]
    - (E) Subject to "no-burn" days as specified in section 11-60-34.

This exception shall not apply to the City and County of Honolulu. [Eff 11/29/82; am, ren §11-60-31 and comp 4/14/86; am and comp ] (Auth: HRS §§342B-3, 342B-14, 342B-4, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-14, 342B-4, 342B-31; 42 U.S.C. §§7407,

7410, 7416; 40 C.F.R. Parts 50, 51, 52)

§11-60-32 Agricultural burning, permit requirement. No person, engaged in any agricultural operation, shall cause or permit agricultural burning without first obtaining an agricultural burning permit from the director. Failure to comply with the terms and conditions of the permit or this chapter shall invalidate the permit. No agricultural permit shall be granted for, or be construed to permit, the open burning of trash and other wastes that have been handled or processed by factory operations. [Eff 11/29/82; am, ren §11-60-32 and comp 4/14/86; comp ] (Auth: HRS §§342B-3, 342B-14, 342B-4, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-14, 342B-4, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

§11-60-33 Agricultural burning, applications.  
(a) Applications for agricultural burning permits shall be made on forms specified by the director and shall be accompanied by two copies of complete data, which [will] shall include maps of areas to be burned showing fields by appropriate numbers and acreage, direction of prevailing winds, location of residential, school, commercial establishments, public buildings, airports, and public utilities, the designation of fields to be burned under specified wind conditions, alternate means of disposal of crops, and any other information that the director may specify.

(b) Each application shall be signed by the applicant and shall constitute an agreement that the applicant shall comply with all the terms and conditions of the permit and this chapter. [Eff 11/29/82; am, ren §11-60-33 and comp 4/14/86; am and comp ] (Auth: HRS §§342B-3, 342B-14, 342B-4, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-14, 342B-4, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

§11-60-34 Agricultural burning, "no-burn" days.  
(a) [All agricultural burning is prohibited, and no] No person, with or without an agricultural burning permit, shall cause or allow agricultural burning under the following conditions:

- (1) On any island when meteorological conditions have resulted in widespread haze on that island and where the national weather service predicts a continuation or deterioration of existing meteorological conditions for the next twenty-four hours.

For the purposes of this section, widespread haze shall be considered to exist when all visible ridges [within]:

(A) Within five to ten miles have a "smoky" or bluish appearance and colors are subdued[,]; and [beyond]

(B) Beyond ten miles [that are visible] have a blurred appearance; or

- (2) On the island of Oahu either when the condition specified in paragraph (1) occurs or when meteorological conditions have resulted in a rise of the carbon monoxide level exceeding five mg/m<sup>3</sup> for an eight-hour average or the particulate matter level exceeding one hundred µg/m<sup>3</sup> for twenty-four hours and when the national weather service predicts a continuation or deterioration of existing meteorological conditions for the next twenty-four hours.

(b) Notices of "no-burn" days for the specified island or islands shall be provided on or before 4:00 p.m. by radio broadcast through the national weather service and shall apply for the succeeding day. [Eff 11/29/82; am, ren S11-60-34 and comp 4/14/86; am and comp ] (Auth: HRS §§342B-3, 342B-14, 342B-4, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-14, 342B-4, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

S11-60-35 Agricultural burning, record keeping and monitoring. (a) Each permittee shall maintain a record of conditions existing at the time of each [burn] burning, including the location and identification of burn area, size of area, date and time of day, prevailing wind direction and speed, rainfall in preceding twenty-four hours, type of material, and any other pertinent data as required by the director.

(b) In recording meteorological data required by subsection (a), the permittee may use national weather service data or, [on] at the permittee's [own motion, conduct monitoring of] discretion, the permittee may elect to monitor the conditions, provided that the

instruments used have been approved by the director.  
[Eff 11/29/82; am, ren S11-60-35 and comp 4/14/86; am  
and comp ] (Auth: HRS §§342B-3,  
342B-14, 342B-4, 342B-31; 42 U.S.C. §§7407, 7410,  
7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3,  
342B-14, 342B-4, 342B-31; 42 U.S.C. §§7407, 7410,  
7416; 40 C.F.R. Parts 50, 51, 52)

S11-60-36 Agricultural burning, action on application. (a) The director shall act on an application within a reasonable time, but not to exceed ninety calendar days from the date the complete application is received, and shall notify the applicant in writing of the approval or denial of the application. If the director has not acted within the ninety calendar-day period, the application shall be deemed to have been approved.

(b) All applications shall be submitted to the Department of Health, 1250 Punchbowl Street, Honolulu, HI 96813.

(c) If an application is denied, the applicant may request a hearing in accordance with chapter 91, HRS.

(d) The permit may be granted for a period of up to one year from the date of approval.

(e) On the director's own motion or the application of any person, the director may modify, suspend, or revoke a permit if, after affording the applicant a hearing in accordance with chapter 91, HRS, it is determined that:

- (1) Any condition of the permit has been violated;
- (2) Any rule of the department has been violated;
- (3) Any provision of chapter 342, HRS, has been violated;
- (4) The maintenance or attainment of NAAQS will be interfered with; or
- (5) The action is in the public interest.

(f) The permit shall not be transferable, whether by operation of law or otherwise or from one person to another.

(g) Every applicant for a permit shall pay a filing fee according to the following schedule:

- (1) Less than ten acres - \$10;
- (2) Ten to one hundred acres - \$30;
- (3) Greater than one hundred acres - \$75.

The acreage shall be the total acreage designated to be burned as specified in the permit. The filing fee shall be submitted with the application and shall not

be refunded or applied to any subsequent application. Fees shall be made payable to the State of Hawaii. Any federal, state, or county government agency shall be exempt from paying all fees as prescribed in this section. [Eff 11/29/82; am, ren §11-60-36 and comp 4/14/86; am and comp ] (Auth: HRS §§342B-3, 342B-14, 342B-4, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-14, 342B-4, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

§§11-60-37 to 11-60-39 (Reserved)

## SUBCHAPTER 3

## STATIONARY SOURCES

S11-60-40 Applicability. (a) Except as provided by section 11-60-51, no person shall begin actual construction, modification, or relocation of an emissions unit or air pollution control equipment of any stationary source without first obtaining authority to construct from the director. The construction, modification, or relocation shall continue only as long as the authority to construct remains in effect. The authority to construct shall not constitute, nor be construed[, ] to be an approval of the design or operation of the stationary source. Further, authority to construct does not guarantee or imply that a permit to operate will be issued. A permit to operate shall be issued only in accordance with this chapter and it is the duty of the applicant to insure compliance with the law and this chapter in the construction and operation of any stationary source.

(b) No person shall cause or permit the operation of any stationary source constructed, modified, or relocated after March 20, 1972, without first obtaining a permit to operate from the director. A stationary source may operate as long as it has a valid permit to operate.

(c) The following are exempt from the requirements of subsections (a) and (b), except that when the operations or equipment in paragraphs (6) to (11) are part of a major stationary source or major modification or are subject to Standards of Performance for New Stationary Sources, the exemptions shall not apply:

- (1) The installation or altering of an air pollutant detector, air pollutant recorder, combustion controller, or combustion shutoff;
- (2) Air conditioning or ventilating systems not designed to remove air pollutants generated by or released from equipment;
- (3) Mobile internal combustion engines;
- (4) Laboratory equipment used exclusively for chemical or physical analyses;
- (5) Ocean-going vessels;
- (6) Fuel burning equipment, other than smoke house generators, which is used in a private dwelling; or has a BTU gross input rate of less than five hundred thousand BTU per hour; or is used for space heating, other

- than boilers and hot air furnaces;
- (7) Steam generators, steam superheaters, water boilers, water heaters, and closed heat transfer [system] systems that have a maximum gross heat input rate of less than two hundred fifty million BTU per hour, and are fired exclusively with one of the following:
    - (A) Natural or synthetic gas;
    - (B) Liquified petroleum gas; or
    - (C) A combination of natural, synthetic, or liquified petroleum gas;
  - (8) Paint spraying operations utilizing paint spray booths;
  - (9) Woodworking shops with a sawdust collection system;
  - (10) Any stationary tank, reservoir, or other container of capacity equal to or less than forty thousand gallons, storing volatile organic compounds;
  - (11) Standby generators used exclusively to provide electricity and standby sewage pump drives, both used only during power outages and fired exclusively by any of the following fuels:
    - (A) Natural or synthetic gas;
    - (B) Liquified petroleum gas;
    - (C) Fuel oil No. 1 or No. 2; or
    - (D) Diesel fuel oil No. 1D or No. 2D;
  - (12) Other minor sources as specified by the director.
- (d) Issuance of any authority to construct or permit to operate shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of this chapter and any other requirements under county, state, or federal law.
- [Eff 11/29/82; am, ren S11-60-40 and comp 4/14/86; am and comp ] (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-14, 342B-31, 342B-30; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

§11-60-41 Conditions for considering applications. (a) The director shall approve an application for authority to construct if the applicant can show to the satisfaction of the director that:

- (1) The best available control technology is provided to control those pollutants subject to NAAQS or state ambient air quality standards that the stationary source or modification would emit in significant amounts considering any limitation, enforceable by the director, on the source to emit a pollutant;
- (2) The applicable rules of this chapter and any applicable Standards of Performance for New Stationary Sources or National Emission Standards for Hazardous Air Pollutants delegated by the EPA administrator to the director for implementation and enforcement will be met;
- (3) The maintenance or attainment of any NAAQS and any state ambient air quality standard will not be violated or endangered;
- (4) Issuance of the authority to construct is in the public interest as defined by section 342B-4, HRS;
- (5) For major stationary sources or major modifications, the prevention of significant deterioration review requirements of subchapter 4 are met.

(b) The director shall approve an application for permit to operate and renewal thereof if the applicant can show to the satisfaction of the director that:

- (1) The construction, modification, relocation, or operation is in accordance with the authority to construct or permit to operate;
- (2) The provisions of subsection (a) (2) and (3) will be or are met; and
- (3) Issuance of the permit to operate is in the public interest as defined by section 342B-4, HRS.

[Eff 11/29/82; am, ren §11-60-41 and comp 4/14/86; comp ] (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-14, 342B-31, 342B-30; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)



S11-60-42 Applications. (a) Every application for authority to construct or permit to operate shall be submitted to the director on the forms furnished by the director.

(b) The applicant shall submit sufficient information to enable the director to make a decision on the application. Information submitted shall include but not be limited to the following:

- (1) A description of the nature, location, design capacity, and typical operating schedule of the source or modification, including specifications and drawings showing its design and plant layout;
- (2) A detailed description as to what system of continuous emission reduction or control is planned by the source or modification and an estimate of emissions before and after controls;
- (3) A detailed schedule for construction of the source or modification;
- (4) If requested by the director, an air quality impact of the source or modification, including meteorological and topographical data necessary to estimate the impact;
- (5) If requested by the director, an analysis of the air quality impact and the nature and extent of any or all general commercial, residential, industrial and other growth which has occurred in the area the source or modification affects;
- (6) If requested by the director, results of source emission testing, ambient air quality monitoring, or both;
- (7) If requested by the director, information on other available control technologies; and
- (8) Other information as the director may require.

(c) Every application shall be signed by the applicant and shall constitute an acknowledgement that the applicant assumes responsibility for the construction, modification, or operation of the source in accordance with the permit conditions and this chapter. The application shall be signed by one of the following:

- (1) In the case of corporations, by a principal executive officer of at least the level of vice president, or a duly authorized representative, if that representative is responsible for the overall operation of the source;
- (2) In the case of a partnership, by a general

partner;

- (3) In the case of a sole proprietorship, by the proprietor; or
- (4) In the case of a county, state, or federal source, by either a principal executive officer, ranking elected official, or other duly authorized employee.

[Eff 11/29/82; am, ren §11-60-42 and comp 4/14/86; comp ] (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-14, 342B-31, 342B-30; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

§11-60-43 Fees. (a) Every applicant for authority to construct and permit to operate shall pay the applicable fees as set forth in section 11-60-44. The fee shall be submitted with the application and shall not be refunded nor applied to any subsequent application.

(b) Any federal, state, or county government agency shall be exempt from paying all fees as prescribed in this section.

(c) Fees shall be made payable to the State of Hawaii. [Eff 11/29/82; am, ren §11-60-43 and comp 4/14/86; comp ] (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-14, 342B-31, 342B-30; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

§11-60-44 Fee schedule. The fee schedule for filing of an application shall be as follows:

	<u>Source Subject to Subchapter 3 Only</u>	<u>Source Subject to Subchapters 3 and 4</u>
Authority to construct	\$50	\$500
Permit to operate	\$50 a year	\$100 a year
Permit to operate renewal	\$50 a year	\$100 a year
Change of ownership	\$10	\$ 10
Change of location	\$25	\$ 50

[Eff 11/29/82; am, ren §11-60-44 and comp 4/14/86; comp ] (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51,

52) (Imp: HRS §§342B-3, 342B-14, 342B-31, 342B-30; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

S11-60-45 Public comment. (a) Except as provided in subsection (b), in considering any application for authority to construct or permit to operate, the director, at the director's sole discretion or upon the timely written request of any person, may allow for notice and opportunity for public comment in accordance with this section, if the director is of the opinion that public comment would aid in the director's decision.

(b) The director shall provide for notice and opportunity for public comment for any application for authority to construct a major stationary source or major modification subject to the prevention of significant deterioration review requirements of subchapter 4 in accordance with this section.

(c) Notice and opportunity for public comment, when allowed, shall be made as follows:

- (1) The director shall make available in at least one location in the county in which the source is located or would be located, a copy of all materials submitted by the applicant, except for materials deemed to be confidential by the applicant pursuant to section 11-60-16, a copy of the director's proposed action, and a copy or summary of other materials, if any, considered in making the director's proposed action;
- (2) The director shall notify the public, by advertisement in a newspaper of general circulation in each county in which the proposed source is located or would be located, of the application, the director's proposed action, including, if applicable, the degree of increment consumption that is expected from the source or modification, and of the place where all relevant non-confidential documents will be available for public inspection;
- (3) The director shall send a copy of the public notice to the applicant, the EPA administrator, the offices of the chief executives of the counties where the source is located or would be located, and any federal land manager whose lands may be affected by emissions from the source or modification;
- (4) The director shall provide a period of

thirty days following the date of the public notice during which time interested persons may submit written comments on the air quality impact of the source, alternatives to it, the control technology required, and other appropriate considerations; and

- (5) The director, [on] at the director's sole discretion or [on] at the written request of any person, may hold a public hearing if the public hearing would aid in the director's decision[:]. The following shall apply to a hearing:

(A) Any request for a public hearing shall be filed within the thirty-day period prescribed in paragraph (4) and shall indicate the interest of the party filing the request and the reasons why a hearing is warranted; and

(B) The director shall publish the public notice for a hearing at least thirty days in advance of the hearing date and shall conduct the hearing in the geographical area of the proposed source.

(d) The applicant may choose[, ] to respond to the public comments received or the director may order the applicant to respond in writing to the comments. The applicant shall respond within thirty days after the period for public comment has ended, or within thirty days after the public hearing is held, whichever is later[, to the public comments received].

(e) The director shall consider all written comments submitted within the thirty days of the date of the public notice, all comments received at any public hearing, and the applicant's responses, if any, in making a final decision on the application. The director shall make the written public comments and applicant's responses available for public inspection.

(f) The director's written decision on the application shall be available for public inspection.

(g) Any person may request in writing [notification] to be notified of applications pending with the department. The request shall be filed with the director and shall describe or identify the type of applications for which notification is sought. [The request shall be filed on an annual calendar basis and the request shall be granted for the calendar year only.] [Eff and comp 4/14/86; am and comp

] (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52, 60, 61) (Imp: HRS §§342B-3, 342B-14, 342B-31, 342B-

30; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52, 60, 61)

S11-60-46 Action on application. (a) The director shall not act upon or consider any incomplete application. An application shall be deemed complete only when:

- (1) All required and requested information, including the application form, plans, maps and other analyses required by this subchapter or the prevention of significant deterioration review rules of subchapter 4 have been timely submitted;
- (2) All fees have been paid;
- (3) All public notice and public hearing requirements under section 11-60-45 have been satisfied; and
- (4) The director certifies that the application is complete.

(b) The director, in writing, shall approve, conditionally approve, or deny an application within one hundred eighty days of certification that the application is complete. The failure of the director to act within the one hundred eighty-day period shall be deemed as an approval of the application so long as the applicant acts consistently with the application and with all plans, specifications, and other information submitted as a part thereof and provided the application conforms to all requirements of this chapter.

(c) The applicant, within twenty days after receipt of notice of the director's approval, conditional approval, or denial of the application, may file a written request for a hearing in accordance with chapter 91, HRS. [Eff 11/29/82; am, ren S11-60-46 and comp 4/14/86; am and comp ] (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-14, 342B-31, 342B-30; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

S11-60-47 Permit conditions. (a) The director may conditionally approve an authority to construct or permit to operate.

(b) The director may impose conditions upon an authority to construct or permit to operate that the director deems reasonably necessary to insure compliance with this chapter, any NAAQS, and any state

ambient air quality standard, including conditions regarding equipment, work practice, or operation.

(c) In addition to the conditions authorized in subsection (b), the director may impose more restrictive conditions upon authority to construct or permit to operate further limiting the air pollutants and operation of the source. In determining whether to impose more restrictive conditions, the director shall consider the relevant circumstances of each individual case, including but not limited to the availability of a reasonable control technology, cleaner fuels or a less polluting operating process, the consideration of the existing air quality and the resulting degradation, the protection of the public health, welfare and safety, and any information, assumptions, limitations or statements made in conjunction with a permit application.

[(c)] (d) The director may require the installation of devices for measurement or analysis of source emissions or ambient concentrations of air pollutants at the expense of the applicant.

[(d)] (e) On the director's own motion or on written request of the applicant, the director may condition the authority to construct to allow the temporary use or operation of the source, to enable the source to conduct source emission tests either for the applicant's purpose or for satisfaction of a permit condition, or for other reasonable purposes. The temporary use or operation under the authority to construct may be allowed under the following conditions:

- (1) The permittee has notified the director in writing that the construction, modification, or relocation is substantially complete;
- (2) The permittee has submitted an application to the director for a permit to operate; and
- (3) The temporary use or operation shall be in conformance with the conditions of the authority to construct.

The temporary use or operation shall not be for more than one hundred eighty days. [Eff 11/29/82; am, ren S11-60-47 and comp 4/14/86; am and comp ]  
(Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-14, 342B-31, 342B-30; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

S11-60-48 Period of permit. (a) [Authority] An authority to construct or permit to operate shall not be issued for any term exceeding five years.

(b) On written request, the director may extend the authority to construct period upon satisfactory showing that an extension is justified; provided in no case shall an extension be granted if the combined term of the originally issued permit and any extension or extensions [exceeds] exceed five years.

(c) On application, the permit to operate may be renewed for any term not to exceed five years. [Eff 11/29/82; am, ren §11-60-48 and comp 4/14/86; am and comp ] (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-14, 342B-31, 342B-30; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

§11-60-49 Holding of permit. (a) The authority to construct or permit to operate shall be maintained at or near the stationary source for which the authority to construct or permit to operate was issued and shall be made available for inspection upon the director's request.

(b) No person shall wilfully deface, alter, forge, counterfeit, or falsify an authority to construct or permit to operate. [Eff 11/29/82; am, ren §11-60-49 and comp 4/14/86; comp ] (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-14, 342B-31, 342B-30; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

§11-60-50 Transfer of permit. (a) [Authority] An authority to construct or permit to operate shall not be transferable, whether by operation of law or otherwise, either from one location to another or from one piece of equipment to another.

(b) [Authority] An authority to construct or permit to operate shall not be transferable, whether by operation of law or otherwise, from one person to another without the approval of the director. [Request] A request for transfer from one person to another shall be made on an application form furnished by the director. [Eff 11/29/82; am, ren §11-60-50 and comp 4/14/86; am and comp ] (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-14, 342B-31, 342B-30; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

S11-60-51 Temporary sources. Except as provided in subchapter 4, any source which has obtained an authority to construct and permit to operate in accordance with section 11-60-40(a) and (b), respectively, and desires to operate twelve consecutive months or less at another location may apply to do so by applying [only] for only a permit to operate pursuant to section 11-60-40(b), provided that there is no modification in the equipment and operation of the source. [Eff and comp 4/14/86; am and comp ] (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-14, 342B-31, 342B-30; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

S11-60-52 Cancellation of authority to construct. [Authority] An authority to construct shall become invalid if construction is not commenced within twelve months after receipt of its approval, if construction is discontinued for a period of twelve months or more, or if construction is not completed within a reasonable time. The director may extend the twelve month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project. Each phase shall commence construction within twelve months of the projected and approved commencement date. [Eff 11/29/82; am, ren S11-60-52 and comp 4/14/86; am and comp ] (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-14, 342B-31, 342B-30; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

S11-60-53 Suspension, revocation, and modification. (a) The director shall revoke, suspend, or modify an authority to construct or permit to operate if, after a hearing in accordance with chapter 91, HRS, the director finds any one of the following:

- (1) The source does not comply with the requirements of this chapter;
- (2) The source violates or would endanger the maintenance or attainment of[, or causes a violation of,] any NAAQS or [any] state ambient air quality standard;
- (3) The source violated a condition of the permit to operate or authority to construct;
- (4) The authority to construct or permit to



operate was obtained by misrepresentation, or failure to disclose fully all relevant facts;

- (5) The source is constructed or operated not in accordance with the application for authority to construct or permit to operate and any information submitted as part thereof;
- (6) There is a change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge; or
- (7) The action is in the public interest, as defined in section 342B-4, HRS.

(b) If the director determines that any person is violating any provision of this chapter, the director may serve a cease and desist order in accordance with chapter 91, HRS. [Eff 11/29/82; am, ren §11-60-53 and comp 4/14/86; am and comp ] (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-14, 342B-31, 342B-30; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

§11-60-54 Reporting discontinuance. The permanent discontinuance of the construction, modification, relocation, or operation of any stationary source shall be reported, in writing, to the director within thirty days of the discontinuance by the person to whom the authority to construct or permit to operate was issued. [Eff 11/29/82; am, ren §11-60-54 and comp 4/14/86; comp ] (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-14, 342B-31, 342B-30; 42 U.S.C. §§7407, 7416; 40 C.F.R. Parts 50, 51, 52)

§§11-60-55 to 11-60-58 (Reserved)

#### SUBCHAPTER 4

#### PREVENTION OF SIGNIFICANT DETERIORATION REVIEW

§11-60-59 Source applicability. (a) The prevention of significant deterioration review requirements of this subchapter are additional requirements for considering an application for authority to construct required by subchapter 3. The procedures and provisions of subchapter 3 shall govern the prevention of significant deterioration review requirements of this subchapter. The following stationary sources shall comply with this subchapter:

- (1) Except as otherwise provided, any major stationary source and any major modification which emits or would emit any pollutant subject to regulation under the Clean Air Act; and
- (2) Any major stationary source or major modification that would be constructed in an area designated as attainment or unclassifiable under the Clean Air Act.

(b) Exemption from this subchapter does not exempt any major stationary source or major modification from the requirements of subchapter 3.

(c) When a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980 on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then this subchapter shall apply to the source or modification as though construction had not yet commenced on the source or modification.

(d) The "Prevention of Significant Deterioration, Workshop Manual" (U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, N.C. 27711, October 1980) may be used for general guidelines on prevention of significant deterioration review. [Eff and comp 4/14/86; comp ] (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52, 60, 61) (Imp: HRS §§342B-3, 342B-14, 342B-31, 342B-30; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52, 60, 61)

§11-60-60 Exemptions. (a) This subchapter shall not apply to a particular major stationary

source or major modification if the applicant, in the application for authority to construct, demonstrates to the satisfaction of the director that:

- (1) The source or modification has a permit in effect, issued by EPA in conformance with the EPA PSD regulations;
- (2) The source or modification was subject to the review requirements of the EPA PSD regulations by EPA before the effective date of this subchapter. The applications shall continue to be processed and granted or denied by EPA unless otherwise specified by the director and EPA;
- (3) The source or modification would be a nonprofit health or nonprofit educational institution, or a major modification would occur at such an institution;
- (4) The source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating its potential to emit and the source does not belong to any of the following categories:
  - (A) Coal cleaning plants [( ) with thermal dryers( )];
  - (B) Kraft pulp mills;
  - (C) Portland cement plants;
  - (D) Primary zinc smelters;
  - (E) Iron and steel mills;
  - (F) Primary aluminum ore reduction plants;
  - (G) Primary copper smelters;
  - (H) Municipal incinerators capable of charging more than [250] two hundred fifty tons of refuse per day;
  - (I) Hydrofluoric, sulfuric, or nitric acid plants;
  - (J) Petroleum refineries;
  - (K) Lime plants;
  - (L) Phosphate rock processing plants;
  - (M) Coke oven batteries;
  - (N) Sulfur recovery plants;
  - (O) Carbon black plants (furnace process);
  - (P) Primary lead smelters;
  - (Q) Fuel conversion plants;
  - (R) Sintering plants;
  - (S) Secondary metal production plants;
  - (T) Chemical process plants;
  - (U) Fossil-fuel boilers [( ) or combination thereof( )] totaling more than two hundred fifty million British thermal

- units per hour heat input;
- (V) Petroleum storage and transfer units with a total storage capacity exceeding three hundred thousand barrels;
- (W) Taconite ore processing plants;
- (X) Glass fiber processing plants;
- (Y) Charcoal production plants;
- (Z) Fossil fuel-fired steam electric plants of more than two hundred fifty million British thermal units per hour heat input;
- (AA) Any other stationary source category which, as of August 7, 1980, has an applicable Standard of Performance for New Stationary Sources or a National Emission Standard for Hazardous Air Pollutants; or
- (5) The source is a portable stationary source which has previously received authority to construct in conformance with this subchapter provided that:
  - (A) The source is to be relocated to a new location for a period of twelve consecutive months or less;
  - (B) The emissions from the source would not exceed its allowable emissions; and
  - (C) The emissions from the source would impact no class I area and no area where an applicable increment is known to be violated.

(b) This subchapter shall not apply to a major stationary source or major modification with respect to a particular pollutant if the applicant, in the application for authority to construct, demonstrates to the satisfaction of the director that as to that pollutant, the source or modification is located in an area designated as nonattainment under the Clean Air Act.

(c) Sections 11-60-61(a) (4) and 11-60-62 [(a), (b), and (c)] shall not apply to a major stationary source or major modification with respect to a particular pollutant, if the applicant, in the application for authority to construct demonstrates to the satisfaction of the director that the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modification:

- (1) Would impact no class I area and no area where an applicable increment is known to be violated; and
- (2) Would be for twelve consecutive months or

less.

(d) The director may exempt a major stationary source or major modification from the requirements of section 11-60-62(a) to (f) with respect to monitoring for a particular pollutant if the applicant, in the application for authority to construct demonstrates to the satisfaction of the director that:

- (1) The emissions increase of the pollutant from the new source or the net emissions increase of the pollutant from the modification would cause, in any area, air quality impacts less than the following amounts:
  - (A) Carbon monoxide - five hundred seventy-five  $\mu\text{g}/\text{m}^3$ , eight-hour average;
  - (B) Nitrogen dioxide - fourteen  $\mu\text{g}/\text{m}^3$ , annual average;
  - (C) Total suspended particulate - ten  $\mu\text{g}/\text{m}^3$ , twenty-four-hour average;
  - (D) Sulfur dioxide - thirteen  $\mu\text{g}/\text{m}^3$ , twenty-four-hour average;
  - (E) Ozone - No de minimis air quality level is provided for ozone;
  - (F) Lead - 0.1  $\mu\text{g}/\text{m}^3$ , twenty-four-hour average;
  - (G) Mercury - 0.25  $\mu\text{g}/\text{m}^3$ , twenty-four-hour average;
  - (H) Beryllium - 0.0005  $\mu\text{g}/\text{m}^3$ , twenty-four-hour average;
  - (I) Fluorides - 0.25  $\mu\text{g}/\text{m}^3$ , twenty-four-hour average;
  - (J) Vinyl chloride - fifteen  $\mu\text{g}/\text{m}^3$ , twenty-four-hour average;
  - (K) Total reduced sulfur - ten  $\mu\text{g}/\text{m}^3$ , one-hour average;
  - (L) Hydrogen sulfide - 0.04  $\mu\text{g}/\text{m}^3$ , one-hour average;
  - (M) Reduced sulfur compounds - ten  $\mu\text{g}/\text{m}^3$ , one-hour average; or
- (2) The concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in subsection (d)(1).

[Eff and comp 4/14/86; am and comp ]  
 (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52, 60, 61) (Imp: HRS §§342B-3, 342B-14, 342B-31, 342B-30; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52, 60, 61)

S11-60-61 Additional conditions for considering applications. (a) An applicant for authority to construct shall demonstrate to the satisfaction of the director that:

- (1) A major stationary source is provided with the best available control technology for each pollutant, subject to regulation under the Clean Air Act, that it would have the potential to emit in significant amounts;
- (2) A major modification is provided with the best available control technology for each pollutant, subject to regulation under the Clean Air Act, [for] which [it] would be a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit;
- (3) For phased construction projects, the determination of best available control technology shall be reviewed and modified as appropriate at the latest reasonable time which occurs not later than eighteen months prior to commencement of construction of each independent phase of the project. At those times, the permittee shall demonstrate the adequacy of any previous determination of best available control technology for the source as a condition of the authority to construct; and
- (4) The allowable emission increases from a major stationary source or major modification, in conjunction with all other applicable emissions increases or reductions [including secondary emissions], would not cause or contribute to a violation of any applicable maximum allowable increase over the baseline concentration in any area.

(b) The director shall provide notice of any application for a major stationary source or major modification from which the emissions would affect a class I area, to the EPA administrator, federal land manager, and the federal official charged with direct responsibility for management of any lands within any such area. The director shall also provide the EPA administrator, federal land manager, and federal officials with a copy of the director's proposed action and shall make available to them any materials

used in making the director's proposed action.

[(1)] (c) The federal land manager may demonstrate to the director that the emissions from a major stationary source or major modification would have an adverse impact on the air quality related values [(including visibility)] of these lands, including visibility, notwithstanding that the change in air quality resulting from emissions from a major stationary source or a major modification would not cause or contribute to concentrations which would exceed the maximum allowable increases for a class I area. If the director concurs with the demonstration, then the director shall deny the application for authority to construct; and

[(2)] (d) The applicant may demonstrate to the federal land manager that the emissions from a major stationary source or major modification would have no adverse impact on the air quality related values of the lands, [(including visibility)], notwithstanding that the change in air quality resulting from the emissions would cause or contribute to concentrations which would exceed the maximum allowable increases for a class I area. If the federal land manager concurs with the demonstration and so certifies, the director, provided that the applicable requirements of this chapter are otherwise met, may approve the application for authority to construct with emission limitations as may be necessary to assure that emissions of sulfur dioxide and particulate matter would not exceed the following maximum allowable increases over baseline concentration for such pollutants:

Maximum Allowable Increase  
([micrograms] Micrograms per cubic meter)

Particulate matter[:]	
Annual geometric mean	19
Twenty-four-hour maximum	37
Sulfur dioxide[:]	
Annual arithmetic mean	20
Twenty-four-hour maximum	91
Three-hour maximum	325

[Eff and comp 4/14/86; am and comp ]  
 (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52, 60, 61) (Imp: HRS §§342B-3, 342B-14, 342B-31, 342B-30; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52, 60, 61)

S11-60-62 Additional information to be submitted with applications. (a) The applicant shall submit an analysis of ambient air quality in the area that the major stationary source or major modification would affect.

(b) This preconstruction ambient air quality analysis shall be provided for each of the following pollutants:

- (1) [For the source, each] Each pollutant that [it] the source would have the potential to emit in a significant amount; and
- (2) For the modification, each pollutant [for] which [it] would result in a significant net emissions increase.

(c) With respect to any pollutant for which no NAAQS or state ambient air quality standard exists, the analysis shall contain such air quality monitoring data as the director determines is necessary to assess ambient air quality for that pollutant in any area that the emissions of that pollutant would affect.

(d) With respect to any pollutant [( )other than nonmethane hydrocarbons( )] for which standards exist, the analysis shall contain continuous air quality monitoring data gathered for purposes of determining whether emissions of that pollutant would cause or contribute to a violation of the standard or any maximum allowable increase.

(e) The continuous air quality monitoring data that is required shall have been gathered over a period of at least one year and shall represent at least the year preceding receipt of the application, except that if the applicant, in the application for authority to construct, demonstrates to the satisfaction of the director that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one year [( ) but not to be less than four months( )], the data that is required shall have been gathered over at least that shorter period. For data that is gathered over a period shorter than one year, the applicant shall demonstrate through historical data or dispersion modeling that the data has been obtained during a time period when maximum air [qualilty] quality levels can be expected and are representative of average concentrations to be expected for pollutants with annual standards. The "Ambient Monitoring Guidelines for Prevention of Significant Deterioration" (U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, N.C. 27711, November 1980) may be used for general guidelines on ambient monitoring.



(f) With respect to volatile organic compounds, the applicant may provide post-approval monitoring data for ozone in lieu of providing preconstruction data if all conditions listed in title 40 of the code of federal regulations, part 51, appendix S, section IV, as in effect on [date of adoption (]March 25, 1986[)], are satisfied.

(g) The applicant shall submit an analysis of the impairment to visibility, soils, and vegetation that would occur as a result of the source or modification and general commercial, residential, industrial, and other growth associated with the source or modification. The applicant need not provide an analysis of the impact on vegetation having no significant commercial or recreational value.

(h) The applicant shall submit an analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial, and other growth associated with the source or modification. [Eff and comp 4/14/86; am and comp ] (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52, 60, 61) (Imp: HRS §§342B-3, 342B-14, 342B-31, 342B-30; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52, 60, 61)

S11-60-63 Ambient air increments. (a) In areas designated as class I, II, or III, increases in pollutant concentration over the baseline concentration shall be limited to the following:

Maximum Allowable Increase  
(Micrograms per cubic meter)

Class I

Particulate matter	
Annual geometric mean	5
Twenty-four-hour maximum	10
Sulfur dioxide	
Annual arithmetic mean	2
Twenty-four-hour maximum	5
Three-hour maximum	25

Class II

Particulate matter	
Annual geometric mean	19
Twenty-four-hour maximum	37

Sulfur dioxide	
Annual arithmetic mean	20
Twenty-four-hour maximum	91
Three-hour maximum	512

Class III

Particulate matter	
Annual geometric mean	37
Twenty-four-hour maximum	75
Sulfur dioxide	
Annual arithmetic mean	40
Twenty-four-hour maximum	182
Three-hour maximum	700

For any period other than an annual period, the applicable maximum allowable increase may be exceeded during one such period per year at any one location.

(b) All of the following areas shall be class I areas and may not be redesignated:

(1) Volcanoes National Park, Island of Hawaii; and

(2) Haleakala National Park, Island of Maui.

All remaining areas of the State shall be class II areas and may be redesignated in accordance with section 11-60-64. [Eff and comp 4/14/86; comp

] (Auth: HRS §§342B-3, 342B-31; 42

U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 60, 61) (Imp: HRS §§342B-3, 342B-14, 342B-31, 342B-30; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 60, 61)

S11-60-64 Redesignation. (a) The following areas may be redesignated only as class I or II:

- (1) An area which as of August 7, 1977, exceeded ten thousand acres in size and was a national monument, a national primitive area, a national preserve, a national recreational area, a national wild and scenic river, a national wildlife refuge, a national lakeshore or seashore; and
- (2) A national park or national wilderness area established after August 7, 1977, which exceeds ten thousand acres in size.

(b) Except as otherwise specified in section 11-60-63(b), the State may submit to the EPA administrator, [a proposal to redesignate areas of the state class I or class II] as a revision to the Hawaii state implementation plan, a proposal to redesignate

areas of the State as class I or class II provided that:

- (1) At least one public hearing has been held in accordance with the procedures established for the preparation, adoption, and submittal of state implementation plans (40 C.F.R. 51.4);
  - (2) Federal land managers whose lands may be affected by the proposed redesignation were notified at least thirty days prior to the public hearing;
  - (3) A discussion of the reasons for the proposed redesignation, including a satisfactory description and analysis of the health, environmental, economic, social, and energy effects of the proposed redesignation, was prepared and made available for public inspection at least thirty days prior to the hearing and the notice announcing the hearing contained appropriate notification of the availability of such discussion;
  - (4) Prior to the issuance of notice respecting the redesignation of an area that includes any federal lands, the State has provided written notice to the appropriate federal land manager and afforded adequate opportunity [(not in excess of sixty days)] to confer with the State respecting the redesignation and to submit written comments and recommendations. In redesignating any area with respect to which any federal land manager had submitted written comments and recommendations, the State shall have published a list of any inconsistency between that redesignation and those comments and recommendations [(together with) and shall include the reasons for making that redesignation against the recommendation of the federal land manager]]; and
  - (5) The State has proposed the redesignation after consultation with the elected leadership of local county governments in the area covered by the proposed redesignation.
- (c) Except as otherwise specified in subsection (a) and section 11-60-63(b), the State may submit to the EPA administrator a proposal to redesignate areas of the [state] State as class III if:
- (1) The redesignation has been specifically approved by the governor, after consultation

- with the appropriate committees of the legislature, if it is in session, or with the leadership of the legislature, if it is not in session [( )] unless state law provides that the redesignation shall be specifically approved by state legislation[( )] and if county governments of the area to be redesignated enact legislation [( )] including resolutions where appropriate[( )] concurring in the redesignation;
- (2) The redesignation would not cause, or contribute to, a concentration of any air pollutant which would exceed any maximum allowable increase permitted under the classification of any other area or any NAAQS; and
- (3) Any permit application for any major stationary source or major modification subject to this subchapter which could receive a permit only if the area in question were redesignated as class III, and any material submitted as part of that application, were available, insofar as was practicable, for public inspection prior to any public hearing on redesignation of any area as class III."


[Eff and comp 4/14/86; am and comp ]  
(Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 60, 61) (Imp: HRS §§342B-3, 342B-14, 342B-31, 342B-30; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 60, 61)

3. Material, except source notes, to be repealed is bracketed. New material is underscored.

4. Additions to update source notes to reflect these amendments and compilation are not underscored.

5. These amendments to and compilation of chapter 11-59, and 11-60, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on and filed with the Office of the Lieutenant Governor.

  
JOHN C. LEWIN, M.D.  
Director of Health

APPROVED AS TO FORM:

  
Deputy Attorney General

DEPARTMENT OF HEALTH

Amendment and Compilation of Chapter 11-60  
Hawaii Administrative Rules

SUMMARY

1. §11-60-1 is amended.
2. §11-60-3 is amended.
3. §11-60-4 is amended.
4. §11-60-5 is amended.
5. §11-60-9 is amended.
6. §11-60-10 is amended.
7. §11-60-11 is amended.
8. §11-60-14 is amended.
9. §11-60-15 is amended.
10. §11-60-16 is amended.
11. §11-60-17 is amended.
12. §11-60-18 is amended.
13. §11-60-19 is amended.
14. §11-60-31 is amended.
15. §11-60-33 is amended.
16. §11-60-34 is amended.
17. §11-60-35 is amended.
18. §11-60-36 is amended.

19. §11-60-40 is amended.
20. §11-60-45 is amended.
21. §11-60-46 is amended.
22. §11-60-47 is amended.
23. §11-60-48 is amended.
24. §11-60-50 is amended.
25. §11-60-51 is amended.
26. §11-60-52 is amended.
27. §11-60-53 is amended.
28. §11-60-60 is amended.
29. §11-60-61 is amended.
30. §11-60-62 is amended.
31. §11-60-64 is amended.
32. Chapter 60 is compiled.

HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 60

AIR POLLUTION CONTROL

Subchapter 1 Prohibitions and General Requirements

\$11-60-1	Definitions
\$11-60-2	Prohibition of air pollution
\$11-60-3	Visible emissions
\$11-60-4	Control of motor vehicles
\$11-60-5	Fugitive dust
\$11-60-6	Incineration
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\$11-60-8	Process industries
\$11-60-9	Sulfur oxides from fuel combustion
\$11-60-10	Storage of volatile organic compounds
\$11-60-11	Volatile organic compound water separation
\$11-60-12	Pump and compressor requirements
\$11-60-13	Waste gas disposal
\$11-60-14	Malfunction of equipment reporting
\$11-60-15	Sampling, testing, and reporting methods
\$11-60-16	Public access to information
\$11-60-17	Air quality models
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\$11-60-19	Prevention of air pollution emergency episodes
\$11-60-20	Variances
\$11-60-21	Penalties and remedies
\$11-60-22	Severability
\$11-60-23 to 11-60-30	(Reserved)

Subchapter 2 Open Burning

\$11-60-31	Control of open burning
\$11-60-32	Agricultural burning, permit requirement
\$11-60-33	Agricultural burning, applications
\$11-60-34	Agricultural burning, "no-burn" days
\$11-60-35	Agricultural burning, record keeping and monitoring
\$11-60-36	Agricultural burning, action on application
\$11-60-37 to 11-60-39	(Reserved)



### Subchapter 3 Stationary Sources

- \$11-60-40 Applicability
- \$11-60-41 Conditions for considering applications
- \$11-60-42 Applications
- \$11-60-43 Fees
- \$11-60-44 Fee schedule
- \$11-60-45 Public comment
- \$11-60-46 Action on application
- \$11-60-47 Permit conditions
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- \$11-60-49 Holding of permit
- \$11-60-50 Transfer of permit
- \$11-60-51 Temporary sources
- \$11-60-52 Cancellation of authority to construct
- \$11-60-53 Suspension, revocation, and modification
- \$11-60-54 Reporting discontinuance
- \$11-60-55 to 11-60-58 (Reserved)

### Subchapter 4 Prevention of Significant Deterioration Review

- \$11-60-59 Source applicability
- \$11-60-60 Exemptions
- \$11-60-61 Additional conditions for considering applications
- \$11-60-62 Additional information to be submitted with applications
- \$11-60-63 Ambient air increments
- \$11-60-64 Redesignation

Historical Note: Chapter 11-60, Hawaii Administrative Rules, is based substantially on Public Health Regulations, Chapter 43, Air Pollution Control, Department of Health, State of Hawaii. [Eff 3/21/72, am 9/13/72, 1/15/73, 2/13/76; R 11/29/82]

## SUBCHAPTER 1

## PROHIBITIONS AND GENERAL REQUIREMENTS

S11-60-1 Definitions. As used in this chapter:

"Actual emissions" means the actual rate of emissions of a pollutant from an emissions unit.

- (1) In general, actual emissions as of a particular date shall equal the average rate in tons per year at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. The director shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period;
- (2) The director may presume that the source specific allowable emissions for the unit are equivalent to the actual emissions of the unit;
- (3) For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

"Agricultural burning" means open outdoor fires used in agricultural operations, growing of crops, raising of fowls or animals, forest management, or range improvements.

"Agricultural operation" means a bona fide agricultural activity with a license to engage in business, but shall not include school or governmental agricultural activities.

"Air pollutant" means smoke, charred paper, dust, soot, grime, carbon, noxious acids, fumes, gases, odors, particulate matter, or any combination of these.

"Air pollution" has the same meaning as in section 342-21, HRS.

"Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source, unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both, and the most stringent of the following:

- (1) The applicable standards set forth in the Standards of Performance for New Stationary Sources or the National Emission Standards for Hazardous Air Pollutants;
- (2) Any applicable federally enforceable provisions of this chapter including those with a future compliance date; or
- (3) The emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

"Ambient air" means the general outdoor atmosphere.

"BTU" means British thermal unit.

"Baseline area" means any intrastate area and every part thereof, designated as attainment or unclassifiable under the Clean Air Act in which the major stationary source or major modification establishing the baseline date would construct or would have an air quality impact equal to or greater than one  $\mu\text{g}/\text{m}^3$  (annual average) of the pollutant for which the baseline date is established.

"Baseline concentration" means that ambient concentration level which exists in the impact area at the time of the applicable baseline date.

- (1) A baseline concentration is determined for each pollutant for which a baseline date is established and shall include:
  - (A) The actual emissions representative of sources in existence on the applicable baseline date, except as provided in paragraph (2); and
  - (B) The allowable emissions of major stationary sources which commenced construction before January 6, 1975 but were not in operation by the applicable baseline date.
- (2) The following shall not be included in the baseline concentration and will affect the applicable maximum allowable increase or increases:
  - (A) Actual emissions from any major stationary source on which construction commenced after January 6, 1975; and
  - (B) Actual emissions increases and decreases at any stationary source occurring after the baseline date.

"Baseline date" means the earliest date after August 7, 1977 on which the first complete application is submitted by a major stationary source or major modification subject to the prevention of significant deterioration review rules of this chapter or EPA PSD

regulations, whichever is earlier. The baseline date is established for each baseline area for each pollutant for which increments or other equivalent measures have been established if:

- (1) The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under the Clean Air Act for the pollutant on the date of its complete application; and
- (2) In the case of a major stationary source, the pollutant would be emitted in significant amounts, or, in the case of a major modification, there would be a significant net emissions increase of the pollutant.

"Begin actual construction" means, in general, initiation of physical on-site construction activities which are of a permanent nature. Those activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in the method of operation, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

"Best available control technology" means an emissions limitation including a visible emission standard based on the maximum degree of reduction for a pollutant which would be emitted from any proposed stationary source or modification which the director on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for that source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of that pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable Standards of Performance for New Stationary Sources and the National Emission Standards for Hazardous Air Pollutants. If the director determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, or operational standard, or a combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. The standard, to the degree possible, shall set forth the

emissions reduction achievable by implementation of the design, equipment, work practice, or operation and shall provide for compliance by means which achieve equivalent results.

"Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person or persons under common control except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same two-digit code) as described in the "Standard Industrial Classification Manual, 1972," as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively).

"Clean Air Act" means the federal Clean Air Act (42 U.S.C. 7401 et seq.) as in effect on March 25, 1986.

"Commence" as applied to construction of a stationary source or modification means that the owner or operator has all necessary preconstruction approvals or permits and either has:

- (1) Begun, or caused to begin a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or
- (2) Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

"Complete" means, in reference to an application, that the application has been properly and fully answered, and timely submitted together with all fees and all required or requested information including tests, analyses, reports, maps, diagrams and other data, and that all other processing steps and requirements have been timely complied with.

"Construction" means any physical change or change in the method of operation including fabrication, erection, installation, demolition, or modification of an emissions unit, which would result in a change in actual emissions.

"Department" means the department of health of the State of Hawaii.

"Director" means the director of health of the State of Hawaii or a duly authorized agent, officer, or inspector.

"Effluent water separator" means any tank, box, sump, or other container in which any volatile organic compounds floating on or entrained or contained in water entering such tank, box, sump, or other container is physically separated and removed from that water prior to outfall, drainage, or recovery of that water.

"Emission" means the act of releasing or discharging air pollutants into the ambient air from any source.

"Emission limitation" means a requirement established by the director or the EPA administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction.

"Emissions unit" means any part of a stationary source which emits or may emit any pollutant subject to regulation under the Clean Air Act, chapter 11-59, or this chapter.

"EPA" means the United States Environmental Protection Agency as established by title 40 of the code of federal regulations, part 1.1 et seq., as it existed on March 25, 1986.

"EPA PSD regulations" means the federal regulations for the prevention of significant deterioration of air quality contained in title 40 of the code of federal regulations, section 52.21 as in effect on March 25, 1986.

"Federal land manager" means, with respect to any lands in the United States, the Secretary of the department with authority over those lands.

"Federally enforceable" means all limitations and conditions which are enforceable by the EPA administrator, including those requirements developed pursuant to the Standards of Performance for New Stationary Sources or the National Emission Standards for Hazardous Air Pollutants, any permit requirements established pursuant to EPA PSD regulations, and any applicable provisions of this chapter approved by EPA administrator as part of the Hawaii state implementation plan.

"Fuel-burning equipment" means any furnace, boiler, apparatus, stack, and all appurtenances thereto, used in the process of burning fuel for the primary purpose of producing heat or power by heat transfer.

"Fugitive dust" means uncontrolled emission of solid airborne particulate matter from any source other than combustion.

"Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"HRS" means Hawaii Revised Statutes.

"Impact area" means the largest area in a baseline area in which a major source or major modification would have an air quality impact equal to or greater than the concentrations listed below for the pollutant for which a baseline date is established.

Sulfur dioxide

Annual average	one $\mu\text{g}/\text{m}^3$
Twenty-four-hour average	five $\mu\text{g}/\text{m}^3$
Three-hour average	twenty-five $\mu\text{g}/\text{m}^3$

Total suspended particulate

Annual average	one $\mu\text{g}/\text{m}^3$
Twenty-four-hour average	five $\mu\text{g}/\text{m}^3$

Nitrogen dioxide

Annual average	one $\mu\text{g}/\text{m}^3$
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Carbon monoxide

Eight-hour average	0.5 $\text{mg}/\text{m}^3$
One-hour average	two $\text{mg}/\text{m}^3$

" $\text{Mg}/\text{m}^3$ " means milligrams per cubic meter.

"Major modification" means any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Clean Air Act.

- (1) Any net emissions increase that is considered significant for volatile organic compounds shall be considered significant for ozone.
- (2) A physical change or change in the method of operation shall not include:
  - (A) Routine maintenance, repair, and replacement, such that replacement does not constitute reconstruction;
  - (B) Use of an alternative fuel or raw material by reason of an order under sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. §§791 et seq.) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act (16 U.S.C. §§791a et seq.);
  - (C) Use of an alternative fuel by reason of an order or rule under the Clean Air Act;
  - (D) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid

waste;

- (E) Use of an alternative fuel or raw material by a stationary source located in an attainment area which:
  - (i) The source was capable of accommodating before January 6, 1975, unless the change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975; or
  - (ii) The source is approved to use under any permit issued pursuant to EPA PSD regulations by EPA or pursuant to the prevention of significant deterioration review rules of this chapter;
- (F) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition which was established after January 6, 1975; or
- (G) Any change in ownership at a stationary source.

"Major stationary source" means:

- (1) Any of the following sources of air pollutants which emits, or has the potential to emit, one hundred tons per year or more of any pollutant subject to regulation under the Clean Air Act: Fossil fuel-fired steam electric plants of more than two hundred fifty million British thermal units per hour heat input, coal cleaning plants, kraft pulp mills, portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than two hundred fifty tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, fossil fuel boilers or combination thereof totaling more than two hundred fifty million British thermal units per hour heat input, petroleum storage and transfer units with a total storage capacity exceeding three hundred



waste;

- (E) Use of an alternative fuel or raw material by a stationary source located in an attainment area which:
  - (i) The source was capable of accommodating before January 6, 1975, unless the change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975; or
  - (ii) The source is approved to use under any permit issued pursuant to EPA PSD regulations by EPA or pursuant to the prevention of significant deterioration review rules of this chapter;
- (F) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition which was established after January 6, 1975; or
- (G) Any change in ownership at a stationary source.

"Major stationary source" means:

- (1) Any of the following sources of air pollutants which emits, or has the potential to emit, one hundred tons per year or more of any pollutant subject to regulation under the Clean Air Act: Fossil fuel-fired steam electric plants of more than two hundred fifty million British thermal units per hour heat input, coal cleaning plants, kraft pulp mills, portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than two hundred fifty tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, fossil fuel boilers or combination thereof totaling more than two hundred fifty million British thermal units per hour heat input, petroleum storage and transfer units with a total storage capacity exceeding three hundred

administrator has not relied on it in issuing any permit which is still in effect for the source under the prevention of significant deterioration review rules of this chapter or EPA PSD regulations when the increase in actual emissions from the particular change occurs.

- (3) An increase or decrease in actual emissions of sulfur dioxide or particulate matter which occurs before the applicable baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.
- (4) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.
- (5) A decrease in actual emissions is creditable only to the extent that:
  - (A) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;
  - (B) It is federally enforceable at and after the time that actual construction on the particular change begins; and
  - (C) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.
- (6) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed one hundred eighty days.

"Opacity" means a state which renders material partially or wholly impervious to rays of light and causes obstruction of an observer's view.

"Open burning" means the burning of any matter in such a manner that the products of combustion resulting from the burning are emitted directly into the ambient air without passing through an adequate stack or flare.

"Ppm" means parts per million by volume.

"Particulate matter" means any material, except water in uncombined form, that is or has been airborne and exists as a liquid or a solid at standard conditions.

"Person" means an individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this State, any other state or political subdivision or agency thereof, or any legal successor, representative, or agency of the foregoing.

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this chapter, secondary emissions shall be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

"Significant" means:

- (1) In reference to emissions of any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

#### Pollutant and Emissions Rate

Carbon monoxide: one hundred tons per year (tpy);  
Nitrogen oxides: forty tpy;  
Sulfur dioxide: forty tpy;  
Particulate matter: twenty-five tpy;  
Ozone: forty tpy of volatile organic compounds;  
Lead: 0.6 tpy;

- Asbestos: 0.007 tpy;  
 Beryllium: 0.0004 tpy;  
 Mercury: 0.1 tpy;  
 Vinyl chloride: one tpy;  
 Fluorides: three tpy;  
 Sulfuric acid mist: seven tpy;  
 Hydrogen sulfide ( $H_2S$ ): ten tpy;  
 Total reduced sulfur ( $H_2S$ , methyl mercaptan, dimethyl sulfide, and dimethyl disulfide): ten tpy; or  
 Reduced sulfur compounds ( $H_2S$ , carbon disulfide and carbonyl sulfide): ten tpy.
- (2) Any emissions rate for a pollutant subject to regulation under the Clean Air Act that paragraph (1) does not list.
  - (3) Notwithstanding paragraph (1), any emissions rate or any net emissions increase associated with a major stationary source or major modification which would construct within ten kilometers of a class I area, and have an impact on such area equal to or greater than one  $\mu g/m^3$  (twenty-four-hour average).

"Smoke" means the gaseous products of burning carbonaceous materials made visible by the presence of small particles of carbon.

"Source" means any property, real or personal, which emits or may emit any air pollutant.

"Stack" means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct but not including flares.

"Standards of Performance for New Stationary Sources" means any federal emission standards contained in title 40 of the code of federal regulations, part 60 as in effect on March 25, 1986.

"Stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the Clean Air Act, chapter 11-59, or this chapter.

"Submerged fill pipe" means any fill pipe the discharged opening of which is entirely submerged when the liquid level is six inches (fifteen centimeters) above the bottom of the tank; or when applied to a tank which is loaded from the side, shall mean any fill pipe the discharge opening of which is eighteen inches (forty-five centimeters) above the bottom of the tank.

" $\mu g/m^3$ " means micrograms per cubic meter.

"Volatile organic compound" means any compound containing carbon and hydrogen or carbon and hydrogen in combination with other elements. Volatile organic compound excludes: methane; ethane; methylene

chloride; 1, 1, 1 - trichloroethane (methyl chloroform); trichlorotrifluoroethane (CFC-113) (Freon 113); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (CFC-22); trifluoromethane (FC-23); dichlorotetrafluoroethane (CFC-114); and chloropentafluoroethane (CFC-115). [Eff 11/29/82; am and comp 4/14/86; am and comp ] (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

S11-60-2 Prohibition of air pollution. No person shall engage in, cause, allow, or maintain any activity which causes air pollution without first securing written approval from the director. Exemption from the requirement of authority to construct or permit to operate shall not relieve the person from fully complying with all applicable provisions of this chapter and with all applicable state and county laws or rules, or federal laws and regulations. [Eff 11/29/82; am, ren S11-60-2 and comp 4/14/86; comp ] (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

S11-60-3 Visible emissions. (a) Visible emission restrictions for stationary sources which commenced construction or were in operation before March 21, 1972, shall be as follows:

- (1) No person shall cause or permit the emission of visible air pollutants of a density equal to or darker than forty per cent opacity, except as provided in paragraph (2);
- (2) A person may discharge into the atmosphere from any single source of emission, for a period aggregating not more than six minutes in any sixty minutes, air pollutants of a density not darker than sixty per cent opacity when building a new fire or when breakdown of equipment occurs.

(b) Visible emission restrictions for stationary sources, the construction, modification, or relocation of which commenced after March 20, 1972, shall be as follows:

- (1) No person shall cause or permit the emission of visible air pollutants of a density equal to or darker than twenty per cent opacity,

- except as provided in paragraph (2);
- (2) A person may discharge into the atmosphere from any single source of emission, for a period aggregating not more than six minutes in any sixty minutes, air pollutants of a density not darker than sixty per cent opacity when building a new fire or when breakdown of equipment occurs.
  - (c) Compliance shall be determined by procedures for evaluating actual opacity readings as described in "Guidelines for Evaluation of Visible Emission" (EPA Document No. EPA-340/1-75-007, April 1975).
  - (d) Exceptions for uncombined water. The provisions of subsections (a) and (b) shall not apply to any emission which, except for the presence of uncombined water, such as condensed water vapor, would not be in violation of those provisions. [Eff 11/29/82; am, ren S11-60-3 and comp 4/14/86; am and comp ] (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

S11-60-4 Control of motor vehicles. (a) No gasoline-powered motor vehicle shall be operated which emits visible smoke while upon streets, roads, or highways.

(b) No diesel-powered motor vehicle shall be operated which emits visible smoke for a period of more than five consecutive seconds while upon streets, roads, or highways.

(c) No person shall cause, suffer, or allow to keep any engine in operation while the motor vehicle is stationary at a loading zone, parking, or servicing area, route terminal, or other off street areas, except:

- (1) During adjustment or repairing of the engine at a garage or similar place of repair;
- (2) During operation of ready-mix trucks, cranes, hoists, and certain bulk carriers, or other auxiliary equipment built onto the vehicle or equipment that require power take-off from the engine, provided that there is no visible discharge of smoke and the equipment is being used and operated for the purposes as originally designed and intended. This exception shall not apply to operations of air conditioning equipment or systems;
- (3) During the loading or unloading of

- passengers, not to exceed three minutes; or
- (4) During the buildup of pressure at the start-up and cooling down at the closing down of the engine for a period of not more than three minutes.

(d) No person shall remove, dismantle, fail to maintain, or otherwise cause to be inoperative any equipment or feature constituting an operational element of the air pollution control system or mechanism of a motor vehicle as required pursuant to the provisions of the Clean Air Act except as permitted or authorized by law. [Eff 11/29/82; am, ren S11-60-4 and comp 4/14/86; am and comp

] (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

S11-60-5 Fugitive dust. (a) No person shall cause or permit any materials to be handled, transported, or stored; or a building, its appurtenances, or a road to be constructed, altered, repaired, or demolished without taking reasonable precautions, as approved by the director, to prevent particulate matter from becoming airborne. Examples of some reasonable precautions are:

- (1) Use, where possible, of water or chemicals for control of dust in the demolition of existing buildings or structures, construction operations, the grading of roads, or the clearing of land;
- (2) Application of asphalt, water, or suitable chemicals on roads, materials stockpiles, and other surfaces which can give rise to airborne dusts;
- (3) Installation and use of hoods, fans, and fabric filters to enclose and vent the handling of dusty materials. Adequate containment methods shall be employed during sandblasting or other similar operations;
- (4) Covering, at all times when in motion, open-bodied trucks transporting materials likely to give rise to airborne dusts;
- (5) Conduct agricultural operations such as tilling of land, application of fertilizers, etc. in such manner as to minimize airborne dust;
- (6) The paving of roadways and their maintenance in a clean condition; and
- (7) The prompt removal of earth or other

material from paved streets onto which earth or other material has been transported by trucking or earth moving equipment, erosion by water, or other means.

(b) Except for persons engaged in agricultural operations or persons who can demonstrate to the director that best practical operation or treatment is being implemented, no person shall cause or permit the discharge of visible emissions of fugitive dust beyond the lot line of the property on which the emissions originate. [Eff 11/29/82; am, ren S11-60-5 and comp 4/14/86; am and comp ] (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

S11-60-6 Incineration. (a) No person shall cause or permit the emission from any incinerator of particulate matter to exceed 0.20 pounds per one hundred pounds (two grams per kilogram) of refuse charged.

(b) Emission tests shall be conducted at maximum burning capacity of the incinerator.

(c) The burning capacity of an incinerator shall be the manufacturer's or designer's guaranteed maximum rate or such other rate as may be determined by the director in accordance with good engineering practices. In cases of conflict, the determination made by the director shall govern.

(d) For the purposes of this chapter, the total of the capacities of all furnaces within one system shall be considered as the incinerator capacity. [Eff 11/29/82; am, ren S11-60-6 and comp 4/14/86; comp ] (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

S11-60-7 Non-fossil fuel burning boilers. (a) No person shall cause or permit the emissions of particulate matter from each bagasse burning boiler and its drier or driers in excess of 0.4 pound per hundred pounds of bagasse as burned. The bagasse combustion rate shall be determined using the procedures described in "Method to Calculate Bagasse Combustion Rate" (Hawaiian Sugar Planters' Association, December 26, 1975) and "Correction of the Flue Gas Rate for Scrubber Moisture" (Hawaiian Sugar



Planters' Association, August 31, 1976).

(b) No person shall cause or permit the emissions of particulate matter from other non-fossil fuel burning boilers in excess of 0.4 pound per hundred pounds of non-fossil fuel as burned. [Eff 11/29/82; am, ren \$11-60-7 and comp 4/14/86; comp ] (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

\$11-60-8 Process industries. (a) No person shall cause or permit the emission of particulate matter in any one hour from any stack or stacks, except for incinerators and non-fossil fuel burning boilers in excess of the amount shown in table 8-1 for the process weight rate allocated to such source.

(b) Process weight per hour is the total weight of all materials introduced into any specific process that may cause any emission of particulate matter through any stack or stacks. Solid fuels charged shall be considered as part of the process weight, but liquid and gaseous fuels and combustion air shall not. For a cyclical or batch operation, the process weight per hour shall be derived by dividing the total process weight by the number of hours in one complete operation from the beginning of any given process to the completion thereof, excluding any time during which the equipment is idle. For a continuous operation, the process weight per hour shall be derived for a typical period of time by the number of hours of the period.

(c) Where the nature of any process or operation or the design of any equipment is such as to permit more than one interpretation of this chapter, the interpretation that results in the minimum value for the allowable emission shall apply.

(d) For purposes of this chapter, a process is any method, reaction, or operation whereby materials introduced into the process undergo physical or chemical change. A specific process, independent or production unit, is one which includes all of the equipment and facilities necessary for the completion of the transformation of the materials to produce a physical or chemical change. There may be several specific processes in series necessary to the manufacture of a product. However, where there are parallel series of specific processes, the similar parallel specific processes shall be considered as a specific process for emission rule. [Eff 11/29/82; am,

ren S11-60-8 and comp 4/14/86; comp ]  
 (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410,  
 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3,  
 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts  
 50, 51, 52)

TABLE 8-1

<u>Process Weight Rate</u> <u>pounds per hour</u>	<u>Rate of Emission</u> <u>pounds per hour</u>
100	0.551
200	0.877
400	1.40
600	1.83
800	2.22
1,000	2.58
1,500	3.38
2,000	4.10
2,500	4.76
3,000	5.38
3,500	5.96
4,000	6.52
5,000	7.58
6,000	8.56
7,000	9.49
8,000	10.4
9,000	11.2
12,000	13.6
16,000	16.5
18,000	17.9
20,000	19.2
30,000	25.2
40,000	30.5
50,000	35.4
60,000 or more	40.0

Interpolation of the data in this table for process weight rates up to sixty thousand pounds per hour shall be accomplished by use of the equation  $E = 4.10 p^{0.67}$ , E = rate of emission in pounds per hour and p = process weight rate in tons per hour.

S11-60-9 Sulfur oxides from fuel combustion.

(a) No person shall burn, sell, or make available for sale for burning in fuel burning equipment, any fuel containing in excess of two percent sulfur by weight except for fuel used in ocean-going vessels.

(b) No person operating fossil-fuel fired power and steam generating facilities, having a power generating output in excess of twenty-five megawatts or a heat input greater than two hundred fifty million BTU per hour shall burn any fuel containing in excess of 0.5 percent sulfur by weight.

(c) The sale and use of fuels prohibited by \$11-60-9(a) and (b) may be allowed when the director has determined that the use of such other fuels will not violate the ambient air quality standards for oxides of sulfur. [Eff 11/29/82; am, ren \$11-60-9 and comp 4/14/86; am and comp ] (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-31, 342B-30; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

\$11-60-10 Storage of volatile organic compounds.

(a) Except as provided in subsection (c), no person shall place, store, or hold in any stationary tank, reservoir, or other container of more than forty thousand-gallon (one hundred fifty thousand-liter) capacity any volatile organic compound which, as stored, has a true vapor pressure equal to or greater than 1.5 pounds per square inch absolute unless the tank, reservoir, or other container is a pressure tank capable of maintaining working pressures sufficient at all times to prevent vapor or gas loss to the atmosphere or is designed, and equipped, with one of the following vapor loss control devices:

- (1) A floating roof, consisting of a pontoon type, double deck type roof or internal floating cover, which will rest on the surface of the liquid contents and be equipped with a closure seal or seals to close the space between the roof edge and tank wall. This control equipment shall not be permitted if the volatile organic compounds have a vapor pressure of eleven pounds per square inch absolute (five hundred sixty-eight millimeters of mercury) or greater under actual storage conditions. All tank gauging or sampling devices shall be gas-tight except when tank gauging or sampling is taking place;
- (2) A vapor recovery system, consisting of a vapor gathering system capable of collecting the volatile organic compound vapors and gases discharged, and a vapor disposal system capable of processing such volatile

organic vapors and gases so as to prevent their emission to the atmosphere and with all tank gauging and sampling devices gas-tight except when gauging or sampling is taking place; or

- (3) Other equipment or means of equal efficiency for purposes of air pollution control as may be approved by the director.

(b) No person shall place, store, or hold in any new stationary storage vessel of more than the two hundred fifty-gallon (nine hundred fifty-liter) capacity any volatile organic compound unless such vessel is equipped with a permanent submerged fill pipe or is a pressure tank as described in subsection (a) or is fitted with a vapor recovery system as described in subsection (a) (2).

(c) Underground tanks shall be exempted from requirements of subsection (a) if the total volume of volatile organic compounds added to and taken from a tank annually does not exceed twice the volume of the tank. [Eff 11/29/82; am, ren S11-60-10 and comp 4/14/86; am and comp ] (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

S11-60-11 Volatile organic compound water separation. (a) No person shall use any compartment of any single or multiple compartment volatile organic compound water separator which receives effluent water containing two hundred gallons (seven hundred sixty liters) a day or more of any volatile organic compound from any equipment processing, refining, treating, storing, or handling volatile organic compounds having a Reid vapor pressure of 0.5 pounds per square inch or greater unless such compartment is equipped with one of the vapor loss control devices in subsections (b) to (e), properly installed, in good working order, and in operation:

(b) A container having all openings sealed and totally enclosing the liquid contents. All gauging and sampling devices shall be gas-tight except when gauging or sampling is taking place;

(c) A container equipped with a floating roof, consisting of a pontoon type, double deck type roof, or internal floating cover, which will rest on the surface of the contents and be equipped with a closure seal or seals to close the space between the roof edge and container wall. All gauging and sampling devices shall

be gas-tight except when gauging or sampling is taking place;

(d) A container equipped with a vapor recovery system consisting of a vapor gathering system capable of collecting the organic vapors and gases discharged and a vapor disposal system capable of processing such organic vapors and gases so as to prevent their emission to the atmosphere with all container gauging and sampling devices gas-tight except when gauging and sampling is taking place; or

(e) A container having other equipment of equal efficiency for purposes of air pollution control as may be approved by the director. [Eff 11/29/82; am, ren S11-60-11 and comp 4/14/86; am and comp ]  
(Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

S11-60-12 Pump and compressor requirements. All pumps and compressors handling volatile organic compounds having a Reid vapor pressure of 1.5 pounds per square inch or greater shall have mechanical seals or other equipment of equal efficiency for purposes of air pollution control as may be approved by the director. [Eff 11/29/82; am, ren S11-60-12 and comp 4/14/86; comp ] (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

S11-60-13 Waste gas disposal. No person shall cause or permit the emission of gas stream containing volatile organic compounds from a vapor blowdown system or emergency relief unless these gases are burned by smokeless flares, or an equally effective control device as approved by the director. [Eff 11/29/82; am, ren S11-60-13 and comp 4/14/86; comp ]  
(Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

S11-60-14 Malfunction of equipment reporting.  
(a) In the case of shutdown of air pollution control equipment for necessary scheduled maintenance, the intent to shut down such equipment shall be reported to the director at least twenty-four hours prior to the

planned shut down. The prior notice shall include, but is not limited to, the following:

- (1) Identification of the specific facility to be taken out of service as well as its location and permit number;
- (2) The expected length of time that the air pollution control equipment will be out of service;
- (3) The nature and quantity of emissions of air pollutants likely to be emitted during the shutdown period;
- (4) Measures such as the use of off-shift labor and equipment that will be taken to minimize the length of the shut down period; and
- (5) The reasons that it would be impossible or impractical to shut down the source operation during the maintenance period.

(b) In the event that any emission source, air pollution control equipment, or related facility starts up, shuts down, or breaks down in such a manner as to cause the emission of air pollutants in violation of applicable rules, the person responsible for the equipment shall immediately notify the department of the failure or breakdown.

- (1) The person responsible shall provide the following information within five days of the notification:
  - (A) Identification of emission points;
  - (B) Magnitude of the excess emissions;
  - (C) Time and duration of the excess emissions;
  - (D) Identity of the process or control equipment causing the excess emissions;
  - (E) Cause and nature of the excess emissions;
  - (F) Description of the steps taken to remedy the situation, prevent a recurrence, limit the excessive emissions, and to assure that the breakdown does not interfere with the attainment and maintenance of the NAAQS;
  - (G) Documentation that the equipment or process was at all times maintained and operated in a manner consistent with good practice for minimizing emissions; and
  - (H) The excess emissions are not part of a recurring pattern indicative of inadequate design, operation or maintenance.

- (2) Upon receipt of the report of excessive emissions and required information, the department may issue a notice of violation to institute an enforcement procedure to provide the source an opportunity to fully explain the circumstances of the violation. The information submitted and all other information to further explain the circumstances shall be utilized to assess the need for further action.

[Eff 11/29/82; am, ren §11-60-14 and comp 4/14/86; am and comp ] (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

§11-60-15 Sampling, testing, and reporting methods. (a) All sampling and testing shall be made and the results calculated in accordance with reference methods specified by EPA, or in the absence of an EPA reference method, test procedures approved by the director. All tests shall be made under the direction of persons knowledgeable in the field of air pollution control.

(b) The department may conduct tests of emissions of air pollutants from any source. Upon request of the director, the person responsible for the source to be tested shall provide necessary ports in stacks or ducts and such other safe and proper sampling and testing facilities, exclusive of instruments and sensing devices, as may be necessary for proper determination of the emissions of air pollutants.

(c) Upon notification from the director, an owner or operator of any stationary source shall maintain a file on information concerning pertinent process and material flow, fuels used, nature and amount and time periods or durations of emissions, or any other information as may be deemed necessary by the director to determine whether the stationary source complies with applicable emission limitations, NAAQS or any state ambient air quality standard or other provisions of this chapter in a permanent form suitable for inspection or in a manner specified by the director.

(d) The information recorded shall be summarized and reported to the director, on forms furnished by the director, and shall be submitted within forty-five days after the end of the reporting period. Reporting

periods shall be January 1 - June 30 and July 1 - December 31 or any other period specified by the director, except that the initial reporting period shall commence on the date the director issues notification of the record keeping requirements.

(e) Information recorded by the owner or operator and copies of the summarizing reports submitted to the director shall be retained by the owner or operator for two years after the date on which the pertinent report is submitted.

(f) Reports obtained from owners or operators of stationary sources shall be correlated with applicable emission limitations and other requirements and shall be made available to the public during normal business hours at the department. [Eff 11/29/82; am and comp 4/14/86; am and comp ] (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

S11-60-16 Public access to information. (a)

All reports pertaining to performance test results, ambient monitoring data and emissions inventory data, applications for permits and forms, and the supporting documentation submitted as part thereof to the department as requirements of this chapter shall be considered public records and available for public inspection, except for information of a confidential nature concerning secret processes or secret methods of manufacture. Any person desiring to request confidential treatment shall make the request in writing to the director at the time of submission of the confidential information, and identify the specific information that is to be accorded confidentiality because it concerns secret processes or secret methods of manufacture. With respect to each item of confidential information, the person requesting confidential treatment shall provide the following documentation:

- (1) If, and how, each item of information concerns secret processes or secret methods of manufacture;
- (2) Who has access to each item of information;
- (3) What steps have been taken to protect the secrecy of each item of information; and
- (4) Why it is believed each item of information must be accorded confidential treatment and the anticipated prejudice should disclosure be made.



Any information submitted to the department without a request for confidential treatment in accordance with this section shall be considered a public record.

(b) All requests for public records shall be in writing, addressed to the director, and shall identify or describe the character of the requested record. Upon approval by the director, the requested public record shall be available to the requester for inspection and copying during established office hours. The director shall charge the requester a reasonable cost for reproduction of any public record, but not less than twenty-five cents per page, sheet, or fraction thereof. [Eff and comp 4/14/86; am and comp ] (Auth: HRS §§91-2, 92-21, 92-50, 92-51, 342B-6, 342B-15; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52, 60, 61) (Imp: HRS §§91-2, 91-21, 92-50, 92-51, 342B-6, 342B-15; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52, 60, 61)

S11-60-17 Air quality models. (a) All estimates of ambient concentrations required shall be based on the applicable air quality models, data bases, and other requirements specified in the "Guideline on Air Quality Models (Revised)" (1986), Supplement A (1987), EPA Publication No. 450/2-78-027R.

(b) Where an air quality impact model specified in the "Guideline on Air Quality Models" is inappropriate, the model may be modified or another model substituted on written request to the director. The public shall be provided the opportunity to comment. Written approval of the director shall be obtained for any modification or substitution. Methods such as those outlined in the "Workbook for the Comparison of Air Quality Models" (U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, N.C. 27711, May 1978) may be used to determine the comparability of air quality models. [Eff and comp 4/14/86; am and comp ] (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52, 60, 61) (Imp: HRS §§342B-3, 342B-14, 342B-31, 342B-30; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52, 60, 61)

S11-60-18 Operations of monitoring stations.  
The EPA monitoring requirements of Appendix B to 40

CFR Part 58, "Ambient Air Quality Surveillance," as in effect on March 25, 1986, shall be met as a minimum during the operation of any monitoring stations required by the director or this chapter. [Eff and comp 4/14/86; am and comp ] (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52, 60, 61) (Imp: HRS §§342B-3, 342B-14, 342B-31, 342B-30; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52, 58, 60, 61)

§11-60-19 Prevention of air pollution emergency episodes. (a) Notwithstanding any other provision of this chapter, this section is designed to prevent the excessive buildup of air contaminants during air pollution episodes, thereby preventing the occurrence of any emergency due to the effects of these contaminants on the public health.

(b) Conditions justifying the proclamation of an air pollution alert, air pollution warning, or air pollution emergency shall be deemed to exist whenever the director determines that the accumulation of air contaminants in any place is attaining or has attained levels which could, if such levels are sustained or exceeded, lead to a threat to the health of the public. In making this determination, the director shall be guided by the criteria set forth in subsections (c) to (g).

(c) "Air pollution forecast": An internal watch by the department shall be actuated by a national weather service advisory that atmospheric stagnation advisory is in effect or the equivalent local forecast of stagnant atmospheric conditions.

(d) "Alert": The alert level is that concentration of pollutants at which first stage control action is to begin. An alert shall be declared, health advisories issued, and source activities curtailed as ordered by the director when any one of the following levels is reached:

- (1) SO<sub>2</sub> - eight hundred µg/m<sup>3</sup> (0.3 ppm), twenty-four-hour average;
- (2) Particulate matter - three hundred seventy-five µg/m<sup>3</sup>, twenty-four-hour average;
- (3) SO<sub>2</sub> and particulate matter combined - product of SO<sub>2</sub>, µg/m<sup>3</sup>, twenty-four-hour average and particulate matter, µg/m<sup>3</sup>, twenty-four-hour average equal to 65x10<sup>3</sup>;
- (4) CO - seventeen mg/m<sup>3</sup> (fifteen ppm), eight-hour average;
- (5) Ozone - four hundred µg/m<sup>3</sup> (0.2 ppm), one-hour average;

- (6)  $\text{NO}_2$  - one thousand one hundred thirty  $\mu\text{g}/\text{m}^3$  (0.6 ppm), one-hour average; two hundred eighty-two  $\mu\text{g}/\text{m}^3$  (0.15 ppm), twenty-four-hour average;

and meteorological conditions are such that this condition can be expected to continue for twelve or more hours.

(e) "Warning": The warning level indicates that air quality is continuing to degrade and that additional abatement actions are necessary. A warning shall be declared, health advisories issued, and source activities curtailed or terminated as ordered by the director when any one of the following levels is reached:

- (1)  $\text{SO}_2$  - one thousand six hundred  $\mu\text{g}/\text{m}^3$  (0.6 ppm), twenty-four-hour average;
- (2) Particulate matter - six hundred twenty-five  $\mu\text{g}/\text{m}^3$ , twenty-four-hour average;
- (3)  $\text{SO}_2$  and particulate matter combined - product of  $\text{SO}_2$ ,  $\mu\text{g}/\text{m}^3$ , twenty-four-hour average and particulate matter,  $\mu\text{g}/\text{m}^3$ , twenty-four-hour average equal to  $261 \times 10^3$ ;
- (4) CO - thirty-four  $\text{mg}/\text{m}^3$  (30 ppm), eight-hour average;
- (5) Ozone - eight hundred  $\mu\text{g}/\text{m}^3$  (0.4 ppm), one-hour average;
- (6)  $\text{NO}_2$  - two thousand two hundred sixty  $\mu\text{g}/\text{m}^3$  (1.2 ppm), one-hour average; five hundred sixty-five  $\mu\text{g}/\text{m}^3$  (0.3 ppm), twenty-four-hour average;

and meteorological conditions are such that this condition can be expected to continue for twelve or more hours

(f) "Emergency": The emergency level shall be declared and the public evacuated from the affected area if so recommended by the director, civil defense, or the police department when the warning level for a pollutant has been exceeded and:

- (1) The concentrations of the pollutant are continuing to increase;
- (2) The director determines that, because of meteorological or other facts, the concentrations will continue to increase; or
- (3) When any one of the following levels is reached:
  - (A)  $\text{SO}_2$  - two thousand one hundred  $\mu\text{g}/\text{m}^3$  (0.8 ppm), twenty-four-hour average;
  - (B) Particulate matter - eight hundred seventy-five  $\mu\text{g}/\text{m}^3$ , twenty-four-hour average;
  - (C)  $\text{SO}_2$  and particulate matter combined -

product of  $\text{SO}_2$ ,  $\mu\text{g}/\text{m}^3$ , twenty-four-hour average and particulate matter,  $\mu\text{g}/\text{m}^3$ , twenty-four-hour average equal to  $393 \times 10^3$ ;

- (D) CO - forty-six  $\text{mg}/\text{m}^3$  (forty ppm), eight-hour average;
- (E) Ozone - one thousand  $\mu\text{g}/\text{m}^3$  (0.5 ppm), one-hour average;
- (F)  $\text{NO}_2$  - three thousand  $\mu\text{g}/\text{m}^3$  (1.6 ppm), one-hour average; seven hundred fifty  $\mu\text{g}/\text{m}^3$  (0.4 ppm), twenty-four-hour average.

(g) "Termination": Once declared, any episode level reached by application of these criteria shall remain in effect until the criteria for that level are no longer met. At that time, the next lower episode level shall be assumed. [Eff 11/29/82; am, ren S11-60-19 and comp 4/14/86; am and comp ]  
 (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-8, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

S11-60-20 Variances. Variances and variance applications shall comply with section 342B-5, HRS, except that, no variance shall prevent or interfere with the maintenance or attainment of NAAQS. Any application for a variance shall include a calculation and description of any change in emissions and the expected ambient air quality concentrations. [Eff 11/29/82; am, ren S11-60-20 and comp 4/14/86; comp ] (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-5, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

S11-60-21 Penalties and remedies. Any person who violates any provision of this chapter shall be subject to the penalties and remedies provided for in sections 342B-7, 342B-9, 342B-9.5, and 342B-12, HRS. [Eff 11/29/82; am, ren S11-60-21 and comp 4/14/86; comp ] (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-7, 342B-9, 342B-10, 342B-12, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

S11-60-22 Severability. If any provision of this chapter or its application to any person or

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circumstance is held invalid, the application of such provision to other persons or circumstances and the remainder of this chapter shall not be affected thereby. [Eff 11/29/82; ren §11-60-22 and comp 4/14/86; comp ] (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

§§11-60-23 to 11-60-30 (Reserved)

## SUBCHAPTER 2

### OPEN BURNING

§11-60-31 Control of open burning. (a) Except as provided in subsection (b) and section 11-60-32 no person shall cause, permit, or maintain any open burning. Any open burning is the responsibility of the person owning, operating, or managing the property, premises, business establishment, or industry where the open burning is occurring.

- (b) Subsection (a) shall not apply to:
  - (1) Open fires for the cooking of food;
  - (2) Fires for recreational, decorative, or ceremonial purposes as approved by the director;
  - (3) Fires to abate a fire hazard, providing the hazard is so declared by the fire department or district forester having jurisdiction;
  - (4) Fires for prevention or control of disease or pests as approved by the director;
  - (5) Fires for training personnel in the methods of fighting fires;
  - (6) Fires for the disposal of dangerous materials, where there is no alternate method of disposal and burning is approved in advance by the director;
  - (7) Fires for residential bathing purposes; and
  - (8) Fires for the burning of leaves, grass, weeds, wood, paper, and similar materials on one's own premises, not exceeding four family units and twenty-five pounds per day, per unit, provided such burning is:
    - (A) Not within fifty feet of any habitable building;
    - (B) Attended or supervised by an adult person;
    - (C) Completed within daylight hours (9:00 a.m. to 6:00 p.m.);
    - (D) Not in violation of the regulations of other fire control agencies; and
    - (E) Subject to "no-burn" days as specified in section 11-60-34.

This exception shall not apply to the City and County of Honolulu. [Eff 11/29/82; am, ren §11-60-31 and comp 4/14/86; am and comp ] (Auth: HRS §§342B-3, 342B-14, 342B-4, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-14, 342B-4, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

§11-60-32 Agricultural burning, permit requirement. No person, engaged in any agricultural operation, shall cause or permit agricultural burning without first obtaining an agricultural burning permit from the director. Failure to comply with the terms and conditions of the permit or this chapter shall invalidate the permit. No agricultural permit shall be granted for, or be construed to permit, the open burning of trash and other wastes that have been handled or processed by factory operations. [Eff 11/29/82; am, ren §11-60-32 and comp 4/14/86; comp ] (Auth: HRS §§342B-3, 342B-14, 342B-4, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-14, 342B-4, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

§11-60-33 Agricultural burning, applications. (a) Applications for agricultural burning permits shall be made on forms specified by the director and shall be accompanied by two copies of complete data, which shall include maps of areas to be burned showing fields by appropriate numbers and acreage, direction of prevailing winds, location of residential, school, commercial establishments, public buildings, airports, and public utilities, the designation of fields to be burned under specified wind conditions, alternate means of disposal of crops, and any other information that the director may specify.

(b) Each application shall be signed by the applicant and shall constitute an agreement that the applicant shall comply with all the terms and conditions of the permit and this chapter. [Eff 11/29/82; am, ren §11-60-33 and comp 4/14/86; am and comp ] (Auth: HRS §§342B-3, 342B-14, 342B-4, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-14, 342B-4, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

§11-60-34 Agricultural burning, "no-burn" days. (a) No person, with or without an agricultural burning permit, shall cause or allow agricultural burning under the following conditions:

- (1) On any island when meteorological conditions have resulted in widespread haze on that island and where the national weather service predicts a continuation or deterioration of existing meteorological

conditions for the next twenty-four hours.

For the purposes of this section, widespread haze shall be considered to exist when all visible ridges:

- (A) Within five to ten miles have a "smoky" or bluish appearance and colors are subdued; and
  - (B) Beyond ten miles have a blurred appearance; or
- (2) On the island of Oahu either when the condition specified in paragraph (1) occurs or when meteorological conditions have resulted in a rise of the carbon monoxide level exceeding five mg/m<sup>3</sup> for an eight-hour average or the particulate matter level exceeding one hundred µg/m<sup>3</sup> for twenty-four hours and when the national weather service predicts a continuation or deterioration of existing meteorological conditions for the next twenty-four hours.

(b) Notices of "no-burn" days for the specified island or islands shall be provided on or before 4:00 p.m. by radio broadcast through the national weather service and shall apply for the succeeding day. [Eff 11/29/82; am, ren S11-60-34 and comp 4/14/86; am and comp ] (Auth: HRS §§342B-3, 342B-14, 342B-4, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-14, 342B-4, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

S11-60-35 Agricultural burning, record keeping and monitoring. (a) Each permittee shall maintain a record of conditions existing at the time of each burning, including the location and identification of burn area, size of area, date and time of day, prevailing wind direction and speed, rainfall in preceding twenty-four hours, type of material, and any other pertinent data as required by the director.

(b) In recording meteorological data required by subsection (a), the permittee may use national weather service data or, at the permittee's discretion, the permittee may elect to monitor the conditions, provided that the instruments used have been approved by the director. [Eff 11/29/82; am, ren S11-60-35 and comp 4/14/86; am and comp ] (Auth: HRS §§342B-3, 342B-14, 342B-4, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-14, 342B-4, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)



S11-60-36 Agricultural burning, action on application. (a) The director shall act on an application within a reasonable time, but not to exceed ninety calendar days from the date the complete application is received, and shall notify the applicant in writing of the approval or denial of the application. If the director has not acted within the ninety calendar-day period, the application shall be deemed to have been approved.

(b) All applications shall be submitted to the Department of Health, 1250 Punchbowl Street, Honolulu, HI 96813.

(c) If an application is denied, the applicant may request a hearing in accordance with chapter 91, HRS.

(d) The permit may be granted for a period of up to one year from the date of approval.

(e) On the director's own motion or the application of any person, the director may modify, suspend, or revoke a permit if, after affording the applicant a hearing in accordance with chapter 91, HRS, it is determined that:

- (1) Any condition of the permit has been violated;
- (2) Any rule of the department has been violated;
- (3) Any provision of chapter 342, HRS, has been violated;
- (4) The maintenance or attainment of NAAQS will be interfered with; or
- (5) The action is in the public interest.

(f) The permit shall not be transferable, whether by operation of law or otherwise or from one person to another.

(g) Every applicant for a permit shall pay a filing fee according to the following schedule:

- (1) Less than ten acres - \$10;
- (2) Ten to one hundred acres - \$30;
- (3) Greater than one hundred acres - \$75.

The acreage shall be the total acreage designated to be burned as specified in the permit. The filing fee shall be submitted with the application and shall not be refunded or applied to any subsequent application. Fees shall be made payable to the State of Hawaii.

Any federal, state, or county government agency shall be exempt from paying all fees as prescribed in this section. [Eff 11/29/82; am, ren S11-60-36 and comp 4/14/86; am and comp ] (Auth: HRS §§342B-3, 342B-14, 342B-4, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-14, 342B-4, 342B-31; 42 U.S.C. §§7407,

§11-60-36

7410, 7416; 40 C.F.R. Parts 50, 51, 52)

§§11-60-37 to 11-60-39 (Reserved)

## SUBCHAPTER 3

## STATIONARY SOURCES

S11-60-40 Applicability. (a) Except as provided by section 11-60-51, no person shall begin actual construction, modification, or relocation of an emissions unit or air pollution control equipment of any stationary source without first obtaining authority to construct from the director. The construction, modification, or relocation shall continue only as long as the authority to construct remains in effect. The authority to construct shall not constitute, nor be construed to be an approval of the design or operation of the stationary source. Further, authority to construct does not guarantee or imply that a permit to operate will be issued. A permit to operate shall be issued only in accordance with this chapter and it is the duty of the applicant to insure compliance with the law and this chapter in the construction and operation of any stationary source.

(b) No person shall cause or permit the operation of any stationary source constructed, modified, or relocated after March 20, 1972, without first obtaining a permit to operate from the director. A stationary source may operate as long as it has a valid permit to operate.

(c) The following are exempt from the requirements of subsections (a) and (b), except that when the operations or equipment in paragraphs (6) to (11) are part of a major stationary source or major modification or are subject to Standards of Performance for New Stationary Sources, the exemptions shall not apply:

- (1) The installation or altering of an air pollutant detector, air pollutant recorder, combustion controller, or combustion shutoff;
- (2) Air conditioning or ventilating systems not designed to remove air pollutants generated by or released from equipment;
- (3) Mobile internal combustion engines;
- (4) Laboratory equipment used exclusively for chemical or physical analyses;
- (5) Ocean-going vessels;
- (6) Fuel burning equipment, other than smoke house generators, which is used in a private dwelling; or has a BTU gross input rate of less than five hundred thousand BTU per hour; or is used for space heating, other than boilers and hot air furnaces;

(7) Steam generators, steam superheaters, water boilers, water heaters, and closed heat transfer systems that have a maximum gross heat input rate of less than two hundred fifty million BTU per hour, and are fired exclusively with one of the following:

- (A) Natural or synthetic gas;
  - (B) Liquified petroleum gas; or
  - (C) A combination of natural, synthetic, or liquified petroleum gas;
- (8) Paint spraying operations utilizing paint spray booths;
  - (9) Woodworking shops with a sawdust collection system;
  - (10) Any stationary tank, reservoir, or other container of capacity equal to or less than forty thousand gallons, storing volatile organic compounds;
  - (11) Standby generators used exclusively to provide electricity and standby sewage pump drives, both used only during power outages and fired exclusively by any of the following fuels:
    - (A) Natural or synthetic gas;
    - (B) Liquified petroleum gas;
    - (C) Fuel oil No. 1 or No. 2; or
    - (D) Diesel fuel oil No. 1D or No. 2D;
  - (12) Other minor sources as specified by the director.

(d) Issuance of any authority to construct or permit to operate shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of this chapter and any other requirements under county, state, or federal law.

[Eff 11/29/82; am, ren S11-60-40 and comp 4/14/86; am and comp ] (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-14, 342B-31, 342B-30; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

§11-60-41 Conditions for considering applications. (a) The director shall approve an application for authority to construct if the applicant can show to the satisfaction of the director that:

- (1) The best available control technology is provided to control those pollutants subject to NAAQS or state ambient air quality standards that the stationary source or modification would emit in significant amounts considering any limitation, enforceable by the director, on the source to emit a pollutant;
- (2) The applicable rules of this chapter and any applicable Standards of Performance for New Stationary Sources or National Emission Standards for Hazardous Air Pollutants delegated by the EPA administrator to the director for implementation and enforcement will be met;
- (3) The maintenance or attainment of any NAAQS and any state ambient air quality standard will not be violated or endangered;
- (4) Issuance of the authority to construct is in the public interest as defined by section 342B-4, HRS;
- (5) For major stationary sources or major modifications, the prevention of significant deterioration review requirements of subchapter 4 are met.

(b) The director shall approve an application for permit to operate and renewal thereof if the applicant can show to the satisfaction of the director that:

- (1) The construction, modification, relocation, or operation is in accordance with the authority to construct or permit to operate;
- (2) The provisions of subsection (a) (2) and (3) will be or are met; and
- (3) Issuance of the permit to operate is in the public interest as defined by section 342B-4, HRS.

[Eff 11/29/82; am, ren §11-60-41 and comp 4/14/86; comp ] (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-14, 342B-31, 342B-30; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

S11-60-42 Applications. (a) Every application for authority to construct or permit to operate shall be submitted to the director on the forms furnished by the director.

(b) The applicant shall submit sufficient information to enable the director to make a decision on the application. Information submitted shall include but not be limited to the following:

- (1) A description of the nature, location, design capacity, and typical operating schedule of the source or modification, including specifications and drawings showing its design and plant layout;
- (2) A detailed description as to what system of continuous emission reduction or control is planned by the source or modification and an estimate of emissions before and after controls;
- (3) A detailed schedule for construction of the source or modification;
- (4) If requested by the director, an air quality impact of the source or modification, including meteorological and topographical data necessary to estimate the impact;
- (5) If requested by the director, an analysis of the air quality impact and the nature and extent of any or all general commercial, residential, industrial and other growth which has occurred in the area the source or modification affects;
- (6) If requested by the director, results of source emission testing, ambient air quality monitoring, or both;
- (7) If requested by the director, information on other available control technologies; and
- (8) Other information as the director may require.

(c) Every application shall be signed by the applicant and shall constitute an acknowledgement that the applicant assumes responsibility for the construction, modification, or operation of the source in accordance with the permit conditions and this chapter. The application shall be signed by one of the following:

- (1) In the case of corporations, by a principal executive officer of at least the level of vice president, or a duly authorized representative, if that representative is responsible for the overall operation of the source;
- (2) In the case of a partnership, by a general

partner;

(3) In the case of a sole proprietorship, by the proprietor; or

(4) In the case of a county, state, or federal source, by either a principal executive officer, ranking elected official, or other duly authorized employee.

[Eff 11/29/82; am, ren S11-60-42 and comp 4/14/86; comp ] (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-14, 342B-31, 342B-30; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

S11-60-43 Fees. (a) Every applicant for authority to construct and permit to operate shall pay the applicable fees as set forth in section 11-60-44. The fee shall be submitted with the application and shall not be refunded nor applied to any subsequent application.

(b) Any federal, state, or county government agency shall be exempt from paying all fees as prescribed in this section.

(c) Fees shall be made payable to the State of Hawaii. [Eff 11/29/82; am, ren S11-60-43 and comp 4/14/86; comp ] (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-14, 342B-31, 342B-30; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

S11-60-44 Fee schedule. The fee schedule for filing of an application shall be as follows:

	<u>Source Subject to Subchapter 3 Only</u>	<u>Source Subject to Subchapters 3 and 4</u>
Authority to construct	\$50	\$500
Permit to operate	\$50 a year	\$100 a year
Permit to operate renewal	\$50 a year	\$100 a year
Change of ownership	\$10	\$ 10
Change of location	\$25	\$ 50

[Eff 11/29/82; am, ren S11-60-44 and comp 4/14/86; comp ] (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51,

52) (Imp: HRS §§342B-3, 342B-14, 342B-31, 342B-30; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

§11-60-45 Public comment. (a) Except as provided in subsection (b), in considering any application for authority to construct or permit to operate, the director, at the director's sole discretion or upon the timely written request of any person, may allow for notice and opportunity for public comment in accordance with this section, if the director is of the opinion that public comment would aid in the director's decision.

(b) The director shall provide for notice and opportunity for public comment for any application for authority to construct a major stationary source or major modification subject to the prevention of significant deterioration review requirements of subchapter 4 in accordance with this section.

(c) Notice and opportunity for public comment, when allowed, shall be made as follows:

- (1) The director shall make available in at least one location in the county in which the source is located or would be located, a copy of all materials submitted by the applicant, except for materials deemed to be confidential by the applicant pursuant to section 11-60-16, a copy of the director's proposed action, and a copy or summary of other materials, if any, considered in making the director's proposed action;
- (2) The director shall notify the public, by advertisement in a newspaper of general circulation in each county in which the proposed source is located or would be located, of the application, the director's proposed action, including, if applicable, the degree of increment consumption that is expected from the source or modification, and of the place where all relevant non-confidential documents will be available for public inspection;
- (3) The director shall send a copy of the public notice to the applicant, the EPA administrator, the offices of the chief executives of the counties where the source is located or would be located, and any federal land manager whose lands may be affected by emissions from the source or modification;
- (4) The director shall provide a period of



thirty days following the date of the public notice during which time interested persons may submit written comments on the air quality impact of the source, alternatives to it, the control technology required, and other appropriate considerations; and

- (5) The director, at the director's sole discretion or at the written request of any person, may hold a public hearing if the public hearing would aid in the director's decision. The following shall apply to a hearing:
  - (A) Any request for a public hearing shall be filed within the thirty-day period prescribed in paragraph (4) and shall indicate the interest of the party filing the request and the reasons why a hearing is warranted; and
  - (B) The director shall publish the public notice for a hearing at least thirty days in advance of the hearing date and shall conduct the hearing in the geographical area of the proposed source.

(d) The applicant may choose to respond to the public comments received or the director may order the applicant to respond in writing to the comments. The applicant shall respond within thirty days after the period for public comment has ended, or within thirty days after the public hearing is held, whichever is later.

(e) The director shall consider all written comments submitted within the thirty days of the date of the public notice, all comments received at any public hearing, and the applicant's responses, if any, in making a final decision on the application. The director shall make the written public comments and applicant's responses available for public inspection.

(f) The director's written decision on the application shall be available for public inspection.

(g) Any person may request in writing to be notified of applications pending with the department. The request shall be filed with the director and shall describe or identify the type of applications for which notification is sought. [Eff and comp 4/14/86; am and comp ] (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52, 60, 61) (Imp: HRS §§342B-3, 342B-14, 342B-31, 342B-30; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52, 60, 61)

S11-60-46 Action on application. (a) The director shall not act upon or consider any incomplete application. An application shall be deemed complete only when:

- (1) All required and requested information, including the application form, plans, maps and other analyses required by this subchapter or the prevention of significant deterioration review rules of subchapter 4 have been timely submitted;
- (2) All fees have been paid;
- (3) All public notice and public hearing requirements under section 11-60-45 have been satisfied; and
- (4) The director certifies that the application is complete.

(b) The director, in writing, shall approve, conditionally approve, or deny an application within one hundred eighty days of certification that the application is complete. The failure of the director to act within the one hundred eighty-day period shall be deemed as an approval of the application so long as the applicant acts consistently with the application and with all plans, specifications, and other information submitted as a part thereof and provided the application conforms to all requirements of this chapter.

(c) The applicant, within twenty days after receipt of notice of the director's approval, conditional approval, or denial of the application, may file a written request for a hearing in accordance with chapter 91, HRS. [Eff 11/29/82; am, ren S11-60-46 and comp 4/14/86; am and comp ] (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-14, 342B-31, 342B-30; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

S11-60-47 Permit conditions. (a) The director may conditionally approve an authority to construct or permit to operate.

(b) The director may impose conditions upon an authority to construct or permit to operate that the director deems reasonably necessary to insure compliance with this chapter, any NAAQS, and any state ambient air quality standard, including conditions regarding equipment, work practice, or operation.

(c) In addition to the conditions authorized in subsection (b), the director may impose more restrictive conditions upon authority to construct or

permit to operate further limiting the air pollutants and operation of the source. In determining whether to impose more restrictive conditions, the director shall consider the relevant circumstances of each individual case, including but not limited to the availability of a reasonable control technology, cleaner fuels or a less polluting operating process, the consideration of the existing air quality and the resulting degradation, the protection of the public health, welfare and safety, and any information, assumptions, limitations or statements made in conjunction with a permit application.

(d) The director may require the installation of devices for measurement or analysis of source emissions or ambient concentrations of air pollutants at the expense of the applicant.

(e) On the director's own motion or on written request of the applicant, the director may condition the authority to construct to allow the temporary use or operation of the source, to enable the source to conduct source emission tests either for the applicant's purpose or for satisfaction of a permit condition, or for other reasonable purposes. The temporary use or operation under the authority to construct may be allowed under the following conditions:

- (1) The permittee has notified the director in writing that the construction, modification, or relocation is substantially complete;
- (2) The permittee has submitted an application to the director for a permit to operate; and
- (3) The temporary use or operation shall be in conformance with the conditions of the authority to construct.

The temporary use or operation shall not be for more than one hundred eighty days. [Eff 11/29/82; am, ren §11-60-47 and comp 4/14/86; am and comp ]  
 (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-14, 342B-31, 342B-30; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

§11-60-48 Period of permit. (a) An authority to construct or permit to operate shall not be issued for any term exceeding five years.

(b) On written request, the director may extend the authority to construct period upon satisfactory showing that an extension is justified; provided in no case shall an extension be granted if the combined term of the originally issued permit and any extension

or extensions exceed five years.

(c) On application, the permit to operate may be renewed for any term not to exceed five years. [Eff 11/29/82; am, ren \$11-60-48 and comp 4/14/86; am and comp ] (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-14, 342B-31, 342B-30; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

\$11-60-49 Holding of permit. (a) The authority to construct or permit to operate shall be maintained at or near the stationary source for which the authority to construct or permit to operate was issued and shall be made available for inspection upon the director's request.

(b) No person shall wilfully deface, alter, forge, counterfeit, or falsify an authority to construct or permit to operate. [Eff 11/29/82; am, ren \$11-60-49 and comp 4/14/86; comp ] (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-14, 342B-31, 342B-30; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

\$11-60-50 Transfer of permit. (a) An authority to construct or permit to operate shall not be transferable, whether by operation of law or otherwise, either from one location to another or from one piece of equipment to another.

(b) An authority to construct or permit to operate shall not be transferable, whether by operation of law or otherwise, from one person to another without the approval of the director. A request for transfer from one person to another shall be made on an application form furnished by the director. [Eff 11/29/82; am, ren \$11-60-50 and comp 4/14/86; am and comp ] (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-14, 342B-31, 342B-30; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

\$11-60-51 Temporary sources. Except as provided in subchapter 4, any source which has obtained an authority to construct and permit to operate in accordance with section 11-60-40(a) and (b), respectively, and desires to operate twelve

consecutive months or less at another location may apply to do so by applying for only a permit to operate pursuant to section 11-60-40(b), provided that there is no modification in the equipment and operation of the source. [Eff and comp 4/14/86; am and comp ] (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-14, 342B-31, 342B-30; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

\$11-60-52 Cancellation of authority to construct. An authority to construct shall become invalid if construction is not commenced within twelve months after receipt of its approval, if construction is discontinued for a period of twelve months or more, or if construction is not completed within a reasonable time. The director may extend the twelve month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project. Each phase shall commence construction within twelve months of the projected and approved commencement date. [Eff 11/29/82; am, ren \$11-60-52 and comp 4/14/86; am and comp ] (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-14, 342B-31, 342B-30; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

\$11-60-53 Suspension, revocation, and modification. (a) The director shall revoke, suspend, or modify an authority to construct or permit to operate if, after a hearing in accordance with chapter 91, HRS, the director finds any one of the following:

- (1) The source does not comply with the requirements of this chapter;
- (2) The source violates or would endanger the maintenance or attainment of any NAAQS or state ambient air quality standard;
- (3) The source violated a condition of the permit to operate or authority to construct;
- (4) The authority to construct or permit to operate was obtained by misrepresentation, or failure to disclose fully all relevant facts;
- (5) The source is constructed or operated not in accordance with the application for authority to construct or permit to operate

and any information submitted as part thereof;

- (6) There is a change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge; or
- (7) The action is in the public interest, as defined in section 342B-4, HRS.

(b) If the director determines that any person is violating any provision of this chapter, the director may serve a cease and desist order in accordance with chapter 91, HRS. [Eff 11/29/82; am, ren S11-60-53 and comp 4/14/86; am and comp

] (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-14, 342B-31, 342B-30; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52)

S11-60-54 Reporting discontinuance. The permanent discontinuance of the construction, modification, relocation, or operation of any stationary source shall be reported, in writing, to the director within thirty days of the discontinuance by the person to whom the authority to construct or permit to operate was issued. [Eff 11/29/82; am, ren S11-60-54 and comp 4/14/86; comp ] (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52) (Imp: HRS §§342B-3, 342B-14, 342B-31, 342B-30; 42 U.S.C. §§7407, 7416; 40 C.F.R. Parts 50, 51, 52)

§§11-60-55 to 11-60-58 (Reserved)

#### SUBCHAPTER 4

#### PREVENTION OF SIGNIFICANT DETERIORATION REVIEW

S11-60-59 Source applicability. (a) The prevention of significant deterioration review requirements of this subchapter are additional requirements for considering an application for authority to construct required by subchapter 3. The procedures and provisions of subchapter 3 shall govern the prevention of significant deterioration review requirements of this subchapter. The following stationary sources shall comply with this subchapter:

- (1) Except as otherwise provided, any major stationary source and any major modification which emits or would emit any pollutant subject to regulation under the Clean Air Act; and
- (2) Any major stationary source or major modification that would be constructed in an area designated as attainment or unclassifiable under the Clean Air Act.

(b) Exemption from this subchapter does not exempt any major stationary source or major modification from the requirements of subchapter 3.

(c) When a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980 on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then this subchapter shall apply to the source or modification as though construction had not yet commenced on the source or modification.

(d) The "Prevention of Significant Deterioration, Workshop Manual" (U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, N.C. 27711, October 1980) may be used for general guidelines on prevention of significant deterioration review. [Eff and comp 4/14/86; comp ] (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52, 60, 61) (Imp: HRS §§342B-3, 342B-14, 342B-31, 342B-30; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52, 60, 61)

S11-60-60 Exemptions. (a) This subchapter shall not apply to a particular major stationary

source or major modification if the applicant, in the application for authority to construct, demonstrates to the satisfaction of the director that:

- (1) The source or modification has a permit in effect, issued by EPA in conformance with the EPA PSD regulations;
- (2) The source or modification was subject to the review requirements of the EPA PSD regulations by EPA before the effective date of this subchapter. The applications shall continue to be processed and granted or denied by EPA unless otherwise specified by the director and EPA;
- (3) The source or modification would be a nonprofit health or nonprofit educational institution, or a major modification would occur at such an institution;
- (4) The source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating its potential to emit and the source does not belong to any of the following categories:
  - (A) Coal cleaning plants with thermal dryers;
  - (B) Kraft pulp mills;
  - (C) Portland cement plants;
  - (D) Primary zinc smelters;
  - (E) Iron and steel mills;
  - (F) Primary aluminum ore reduction plants;
  - (G) Primary copper smelters;
  - (H) Municipal incinerators capable of charging more than two hundred fifty tons of refuse per day;
  - (I) Hydrofluoric, sulfuric, or nitric acid plants;
  - (J) Petroleum refineries;
  - (K) Lime plants;
  - (L) Phosphate rock processing plants;
  - (M) Coke oven batteries;
  - (N) Sulfur recovery plants;
  - (O) Carbon black plants (furnace process);
  - (P) Primary lead smelters;
  - (Q) Fuel conversion plants;
  - (R) Sintering plants;
  - (S) Secondary metal production plants;
  - (T) Chemical process plants;
  - (U) Fossil-fuel boilers or combination thereof totaling more than two hundred fifty million British thermal units per



- hour heat input;
- (V) Petroleum storage and transfer units with a total storage capacity exceeding three hundred thousand barrels;
- (W) Taconite ore processing plants;
- (X) Glass fiber processing plants;
- (Y) Charcoal production plants;
- (Z) Fossil fuel-fired steam electric plants of more than two hundred fifty million British thermal units per hour heat input;
- (AA) Any other stationary source category which, as of August 7, 1980, has an applicable Standard of Performance for New Stationary Sources or a National Emission Standard for Hazardous Air Pollutants; or
- (5) The source is a portable stationary source which has previously received authority to construct in conformance with this subchapter provided that:
  - (A) The source is to be relocated to a new location for a period of twelve consecutive months or less;
  - (B) The emissions from the source would not exceed its allowable emissions; and
  - (C) The emissions from the source would impact no class I area and no area where an applicable increment is known to be violated.

(b) This subchapter shall not apply to a major stationary source or major modification with respect to a particular pollutant if the applicant, in the application for authority to construct, demonstrates to the satisfaction of the director that as to that pollutant, the source or modification is located in an area designated as nonattainment under the Clean Air Act.

(c) Sections 11-60-61(a) (4) and 11-60-62 shall not apply to a major stationary source or major modification with respect to a particular pollutant, if the applicant, in the application for authority to construct demonstrates to the satisfaction of the director that the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modification:

- (1) Would impact no class I area and no area where an applicable increment is known to be violated; and
- (2) Would be for twelve consecutive months or less.

(d) The director may exempt a major stationary source or major modification from the requirements of section 11-60-62(a) to (f) with respect to monitoring for a particular pollutant if the applicant, in the application for authority to construct demonstrates to the satisfaction of the director that:

- (1) The emissions increase of the pollutant from the new source or the net emissions increase of the pollutant from the modification would cause, in any area, air quality impacts less than the following amounts:
  - (A) Carbon monoxide - five hundred seventy-five  $\mu\text{g}/\text{m}^3$ , eight-hour average;
  - (B) Nitrogen dioxide - fourteen  $\mu\text{g}/\text{m}^3$ , annual average;
  - (C) Total suspended particulate - ten  $\mu\text{g}/\text{m}^3$ , twenty-four-hour average;
  - (D) Sulfur dioxide - thirteen  $\mu\text{g}/\text{m}^3$ , twenty-four-hour average;
  - (E) Ozone - No de minimis air quality level is provided for ozone;
  - (F) Lead - 0.1  $\mu\text{g}/\text{m}^3$ , twenty-four-hour average;
  - (G) Mercury - 0.25  $\mu\text{g}/\text{m}^3$ , twenty-four-hour average;
  - (H) Beryllium - 0.0005  $\mu\text{g}/\text{m}^3$ , twenty-four-hour average;
  - (I) Fluorides - 0.25  $\mu\text{g}/\text{m}^3$ , twenty-four-hour average;
  - (J) Vinyl chloride - fifteen  $\mu\text{g}/\text{m}^3$ , twenty-four-hour average;
  - (K) Total reduced sulfur - ten  $\mu\text{g}/\text{m}^3$ , one-hour average;
  - (L) Hydrogen sulfide - 0.04  $\mu\text{g}/\text{m}^3$ , one-hour average;
  - (M) Reduced sulfur compounds - ten  $\mu\text{g}/\text{m}^3$ , one-hour average; or
- (2) The concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in subsection (d) (1).

[Eff and comp 4/14/86; am and comp ]  
 (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52, 60, 61) (Imp: HRS §§342B-3, 342B-14, 342B-31, 342B-30; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52, 60, 61)

S11-60-61 Additional conditions for considering applications. (a) An applicant for authority to

construct shall demonstrate to the satisfaction of the director that:

- (1) A major stationary source is provided with the best available control technology for each pollutant, subject to regulation under the Clean Air Act, that it would have the potential to emit in significant amounts;
  - (2) A major modification is provided with the best available control technology for each pollutant, subject to regulation under the Clean Air Act, which would be a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit;
  - (3) For phased construction projects, the determination of best available control technology shall be reviewed and modified as appropriate at the latest reasonable time which occurs not later than eighteen months prior to commencement of construction of each independent phase of the project. At those times, the permittee shall demonstrate the adequacy of any previous determination of best available control technology for the source as a condition of the authority to construct; and
  - (4) The allowable emission increases from a major stationary source or major modification, in conjunction with all other applicable emissions increases or reductions including secondary emissions, would not cause or contribute to a violation of any applicable maximum allowable increase over the baseline concentration in any area.
- (b) The director shall provide notice of any application for a major stationary source or major modification from which the emissions would affect a class I area, to the EPA administrator, federal land manager, and the federal official charged with direct responsibility for management of any lands within any such area. The director shall also provide the EPA administrator, federal land manager, and federal officials with a copy of the director's proposed action and shall make available to them any materials used in making the director's proposed action.
- (c) The federal land manager may demonstrate to the director that the emissions from a major stationary source or major modification would have an

adverse impact on the air quality related values of these lands, including visibility, notwithstanding that the change in air quality resulting from emissions from a major stationary source or a major modification would not cause or contribute to concentrations which would exceed the maximum allowable increases for a class I area. If the director concurs with the demonstration, then the director shall deny the application for authority to construct; and

(d) The applicant may demonstrate to the federal land manager that the emissions from a major stationary source or major modification would have no adverse impact on the air quality related values of the lands, including visibility, notwithstanding that the change in air quality resulting from the emissions would cause or contribute to concentrations which would exceed the maximum allowable increases for a class I area. If the federal land manager concurs with the demonstration and so certifies, the director, provided that the applicable requirements of this chapter are otherwise met, may approve the application for authority to construct with emission limitations as may be necessary to assure that emissions of sulfur dioxide and particulate matter would not exceed the following maximum allowable increases over baseline concentration for such pollutants:

Maximum Allowable Increase  
(Micrograms per cubic meter)

Particulate matter		
Annual geometric mean		19
Twenty-four-hour maximum		37
Sulfur dioxide		
Annual arithmetic mean		20
Twenty-four-hour maximum		91
Three-hour maximum		325

[Eff and comp 4/14/86; am and comp  
(Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52, 60, 61) (Imp: HRS §§342B-3, 342B-14, 342B-31, 342B-30; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52, 60, 61)]

S11-60-62 Additional information to be submitted with applications. (a) The applicant shall submit an analysis of ambient air quality in the area that the major stationary source or major modification

would affect.

(b) This preconstruction ambient air quality analysis shall be provided for each of the following pollutants:

- (1) Each pollutant that the source would have the potential to emit in a significant amount; and
- (2) For the modification, each pollutant which would result in a significant net emissions increase.

(c) With respect to any pollutant for which no NAAQS or state ambient air quality standard exists, the analysis shall contain such air quality monitoring data as the director determines is necessary to assess ambient air quality for that pollutant in any area that the emissions of that pollutant would affect.

(d) With respect to any pollutant other than nonmethane hydrocarbons for which standards exist, the analysis shall contain continuous air quality monitoring data gathered for purposes of determining whether emissions of that pollutant would cause or contribute to a violation of the standard or any maximum allowable increase.

(e) The continuous air quality monitoring data that is required shall have been gathered over a period of at least one year and shall represent at least the year preceding receipt of the application, except that if the applicant, in the application for authority to construct, demonstrates to the satisfaction of the director that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one year, but not to be less than four months, the data that is required shall have been gathered over at least that shorter period. For data that is gathered over a period shorter than one year, the applicant shall demonstrate through historical data or dispersion modeling that the data has been obtained during a time period when maximum air quality levels can be expected and are representative of average concentrations to be expected for pollutants with annual standards. The "Ambient Monitoring Guidelines for Prevention of Significant Deterioration" (U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, N.C. 27711, November 1980) may be used for general guidelines on ambient monitoring.

(f) With respect to volatile organic compounds, the applicant may provide post-approval monitoring data for ozone in lieu of providing preconstruction data if all conditions listed in title 40 of the code

of federal regulations, part 51, appendix S, section IV, as in effect on March 25, 1986, are satisfied.

(g) The applicant shall submit an analysis of the impairment to visibility, soils, and vegetation that would occur as a result of the source or modification and general commercial, residential, industrial, and other growth associated with the source or modification. The applicant need not provide an analysis of the impact on vegetation having no significant commercial or recreational value.

(h) The applicant shall submit an analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial, and other growth associated with the source or modification. [Eff and comp 4/14/86; am and comp ] (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52, 60, 61) (Imp: HRS §§342B-3, 342B-14, 342B-31, 342B-30; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 52, 60, 61)

S11-60-63 Ambient air increments. (a) In areas designated as class I, II, or III, increases in pollutant concentration over the baseline concentration shall be limited to the following:

Maximum Allowable Increase  
(Micrograms per cubic meter)

Class I

Particulate matter		
Annual geometric mean		5
Twenty-four-hour maximum		10
Sulfur dioxide		
Annual arithmetic mean		2
Twenty-four-hour maximum		5
Three-hour maximum		25

Class II

Particulate matter		
Annual geometric mean		19
Twenty-four-hour maximum		37
Sulfur dioxide		
Annual arithmetic mean		20
Twenty-four-hour maximum		91
Three-hour maximum		512

Class III

Particulate matter	
Annual geometric mean	37
Twenty-four-hour maximum	75
Sulfur dioxide	
Annual arithmetic mean	40
Twenty-four-hour maximum	182
Three-hour maximum	700

For any period other than an annual period, the applicable maximum allowable increase may be exceeded during one such period per year at any one location.

(b) All of the following areas shall be class I areas and may not be redesignated:

(1) Volcanoes National Park, Island of Hawaii; and

(2) Haleakala National Park, Island of Maui.

All remaining areas of the State shall be class II areas and may be redesignated in accordance with section 11-60-64. [Eff and comp 4/14/86; comp

] (Auth: HRS §§342B-3, 342B-31; 42

U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 60,

61) (Imp: HRS §§342B-3, 342B-14, 342B-31, 342B-30; 42

U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 60,

61)

§11-60-64 Redesignation. (a) The following areas may be redesignated only as class I or II:

(1) An area which as of August 7, 1977, exceeded ten thousand acres in size and was a national monument, a national primitive area, a national preserve, a national recreational area, a national wild and scenic river, a national wildlife refuge, a national lakeshore or seashore; and

(2) A national park or national wilderness area established after August 7, 1977, which exceeds ten thousand acres in size.

(b) Except as otherwise specified in section 11-60-63(b), the State may submit to the EPA administrator, as a revision to the Hawaii state implementation plan, a proposal to redesignate areas of the State as class I or class II provided that:

(1) At least one public hearing has been held in accordance with the procedures established for the preparation, adoption, and submittal of state implementation plans (40 C.F.R. 51.4);

- (2) Federal land managers whose lands may be affected by the proposed redesignation were notified at least thirty days prior to the public hearing;
  - (3) A discussion of the reasons for the proposed redesignation, including a satisfactory description and analysis of the health, environmental, economic, social, and energy effects of the proposed redesignation, was prepared and made available for public inspection at least thirty days prior to the hearing and the notice announcing the hearing contained appropriate notification of the availability of such discussion;
  - (4) Prior to the issuance of notice respecting the redesignation of an area that includes any federal lands, the State has provided written notice to the appropriate federal land manager and afforded adequate opportunity, not in excess of sixty days, to confer with the State respecting the redesignation and to submit written comments and recommendations. In redesignating any area with respect to which any federal land manager had submitted written comments and recommendations, the State shall have published a list of any inconsistency between that redesignation and those comments and recommendations and shall include the reasons for making that redesignation against the recommendation of the federal land manager; and
  - (5) The State has proposed the redesignation after consultation with the elected leadership of local county governments in the area covered by the proposed redesignation.
- (c) Except as otherwise specified in subsection (a) and section 11-60-63(b), the State may submit to the EPA administrator a proposal to redesignate areas of the State as class III if:
- (1) The redesignation has been specifically approved by the governor, after consultation with the appropriate committees of the legislature, if it is in session, or with the leadership of the legislature, if it is not in session, unless state law provides that the redesignation shall be specifically approved by state legislation, and if county governments of the area to be redesignated enact legislation, including resolutions




where appropriate, concurring in the redesignation;

- (2) The redesignation would not cause, or contribute to, a concentration of any air pollutant which would exceed any maximum allowable increase permitted under the classification of any other area or any NAAQS; and
- (3) Any permit application for any major stationary source or major modification subject to this subchapter which could receive a permit only if the area in question were redesignated as class III, and any material submitted as part of that application, were available, insofar as was practicable, for public inspection prior to any public hearing on redesignation of any area as class III.

[Eff and comp 4/14/86; am and comp ]  
(Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 60, 61) (Imp: HRS §§342B-3, 342B-14, 342B-31, 342B-30; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, 60, 61)

Amendments to and compilation of chapter 60, title 11, Hawaii Administrative Rules, on the Summary Page dated \_\_\_\_\_ were adopted on \_\_\_\_\_ following public hearing on Kauai on May 4, 1992, on Oahu on May 5, 1992, on Maui on May 6, 1992, and on Hawaii on May 7, 1992, after public hearing notice was given on April 1, 1992, in the *West Hawaii Today*, on April 2, 1992, in the *Hawaii Tribune Herald*, and on April 3, 1992, in the *Honolulu Advertiser*, the *Garden Island* and the *Maui News*.

Chapter 11-60, Hawaii Administrative Rules shall take effect ten days after filing with the Office of the Lieutenant Governor.

  
\_\_\_\_\_  
JOHN C. LEWIN, M.D.  
Director  
Department of Health

Dated: \_\_\_\_\_

\_\_\_\_\_  
JOHN WAIHEE  
Governor  
State of Hawaii

Dated: \_\_\_\_\_

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Deputy Attorney General

Filed: \_\_\_\_\_

Effective: \_\_\_\_\_

DEPARTMENT OF HEALTH

Amendment and Compilation of Chapter 11-59  
Hawaii Administrative Rules

SUMMARY

1. §11-59-3 is amended.
2. §11-59-4 is amended.
3. §11-59-5 is amended.
4. §11-59-6 is amended.
5. Chapter 59 is compiled.

HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 59

AMBIENT AIR QUALITY STANDARDS

- \$11-59-1 Purpose
- \$11-59-2 Definitions
- \$11-59-3 Reference conditions
- \$11-59-4 Ambient air quality standards
- \$11-59-5 Prohibition
- \$11-59-6 Penalties and remedies
- \$11-59-7 Severability

Historical Note: 11-59, Hawaii Administrative Rules, is based substantially on Public Health Regulations, Chapter 42, Ambient Air Quality Standards, Department of Health, State of Hawaii. [Eff 9/24/71; am 3/21/72; R 11/29/82]

\$11-59-1 Purpose. The ambient air quality standards of this chapter seek to protect public health and welfare and to prevent the significant deterioration of air quality. [Eff 11/29/82; comp (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7410, 7416; 40 C.F.R. Part 51) (Imp: HRS §342B-31; 42 U.S.C. §§7407, 7409, 7410, 7416; 40 C.F.R. Part 51)]

\$11-59-2 Definitions. As used in this chapter: "Ambient air" means the general outdoor atmosphere to which the public has access.

"Reference method" means a method of sampling and analyzing the ambient air which the U.S. Environmental Protection Agency (EPA) specifies as a reference or an equivalent method, or absent EPA specifications, a method of sampling and analysis that the state director of health specifies as a reference. [Eff 11/29/82; comp (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7410, 7416; 40 C.F.R. Part 51) (Imp: HRS §342B-31; 42 U.S.C. §§7407, 7409, 7410, 7416; 40 C.F.R. Part 51)]

§11-59-3 Reference conditions. All measurement analyses shall correct results to a reference temperature of twenty-five degrees centigrade and a reference pressure of seven hundred sixty millimeters of mercury. [Eff 11/29/82; am and comp

Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7410, 7416; 40 C.F.R. Part 51) (Imp: HRS §342B-31; 42 U.S.C. §§7407, 7409, 7410, 7416; 40 C.F.R. Part 51)

§11-59-4 Ambient air quality standards. (a) The numerical ambient air quality standards below limit the time-averaged concentration of specified pollutants dispersed or suspended in the ambient air of the State, but these standards do not in any manner authorize the significant deterioration of existing air quality in any portion of the State.

(b) Limiting concentrations specified for a twelve-month period or a calendar quarter shall not be exceeded. Limiting concentrations specified for one-hour, three-hour, eight-hour, and twenty-four-hour periods shall not be exceeded more than once in any twelve-month period.

(c) In the ambient air the concentration of carbon monoxide measured by a reference method shall not exceed:

- (1) An average value of ten milligrams per cubic meter of air during any one-hour period; and
- (2) An average value of five milligrams per cubic meter of air during any eight-hour period.

(d) In the ambient air the average concentration of nitrogen dioxide measured by a reference method during any twelve-month period shall not exceed seventy micrograms per cubic meter of air.

(e) In the ambient air the concentration of suspended particulate matter measured by a reference method shall not exceed:

- (1) A geometric mean of sixty micrograms per cubic meter of air during any twelve-month period; and
- (2) An average value of one hundred fifty micrograms per cubic meter of air during any twenty-four-hour period.

(f) In the ambient air the average concentration of ozone measured by a reference method during any one-hour period shall not exceed one hundred micrograms per cubic meter of air.

(g) In the ambient air the average concentration of sulfur dioxide measured by a reference method shall not exceed:

- (1) An average value of eighty micrograms per

cubic meter of air in any twelve-month period;

- (2) An average value of three hundred sixty-five micrograms per cubic meter of air in any twenty-four-hour period; and
- (3) An average value of one thousand three hundred micrograms per cubic meter of air in any three-hour period.

(h) In the ambient air the average concentration of lead measured as elemental lead by a reference method during any calendar quarter shall not exceed 1.5 micrograms per cubic meter of air.

(i) In the ambient air the average concentration of hydrogen sulfide measured by a reference method shall not exceed thirty-five micrograms per cubic meter of air (25 parts per billion) in any one-hour period. [Eff 11/29/82; am 4/14/86; am and comp

(Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7410, 7416; 40 C.F.R. Parts 50, 51) (Imp: HRS §342B-31; 42 U.S.C. §§7407, 7409, 7410, 7416; 40 C.F.R. Parts 50, 51)

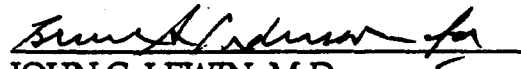
§11-59-5 Prohibition. No person, as defined in section 342B-1, HRS, shall cause, or allow, or contribute to a violation of any ambient air quality standard set forth in this chapter. [Eff 11/29/82; am and comp (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7410, 7416; 40 C.F.R. Part 51) (Imp: HRS §342B-31; 42 U.S.C. §§7407, 7409, 7410, 7416; 40 C.F.R. Part 51)

§11-59-6 Penalties and remedies. Any person who violates section 11-59-5 is liable for penalties and remedies as provided for in Hawaii Revised Statutes, Chapter 342. [Eff 11/29/82; am and comp (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7410, 7416; 40 C.F.R. Part 51) (Imp: HRS §342B-31; 42 U.S.C. §§7407, 7409, 7410, 7416; 40 C.F.R. Part 51)

§11-59-7 Severability. If any provision of this chapter, or its application thereof to any persons or circumstances, is held invalid, the remainder of this chapter, or the application of the provision to other persons or circumstances, shall not be affected thereby. [Eff 11/29/82; comp (Auth: HRS §§342B-3, 342B-31; 42 U.S.C. §§7410, 7416; 40 C.F.R. Part 51) (Imp: HRS §342B-31; 42 U.S.C. §§7407, 7409, 7410, 7416; 40 C.F.R. Part 51)

Amendments to and compilation of chapter 59, title 11, Hawaii Administrative Rules, on the Summary Page dated \_\_\_\_\_ were adopted on \_\_\_\_\_ following public hearing on Kauai on May 4, 1992, on Oahu on May 5, 1992, on Maui on May 6, 1992, and on Hawaii on May 7, 1992, after public hearing notice was given on April 1, 1992, in the *West Hawaii Today*, on April 2, 1992, in the *Hawaii Tribune Herald*, and on April 3, 1992, in the *Honolulu Advertiser*, the *Garden Island* and the *Maui News*.

Chapter 11-59, Hawaii Administrative Rules shall take effect ten days after filing with the Office of the Lieutenant Governor.

  
JOHN C. LEWIN, M.D.  
Director  
Department of Health

Dated: \_\_\_\_\_

\_\_\_\_\_  
JOHN WAIHEE  
Governor  
State of Hawaii

Dated: \_\_\_\_\_

APPROVED AS TO FORM:

  
Deputy Attorney General

Filed: \_\_\_\_\_

Effective: \_\_\_\_\_